

Hiring Veterans and Individuals with Disabilities: Do the HR Data You Collect Help?

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The volume of human resource (HR) data that companies collect has increased significantly over the last decade prompted by the need for improved efficiency and increased regulatory requirements. Human resource information and management systems (HRIS/HRMS) help companies with key HR functions, including recruitment, hiring and talent assessment. Most studies indicate that HR professionals expect data to continue to play an increasing role in managing business decisions.

Do these collected data provide clarity?

While additional data often help companies operate more strategically, they also invite deeper scrutiny by regulatory authorities. Government agencies have increased requests to review information on individuals – particularly when it comes to hiring – making data collection potentially more onerous. Companies face a quandary as to whether data they collect in the normal course of business can answer the hiring questions being asked by regulatory agencies, or whether they need to collect additional data. After significant investment in both time and technology, it is imperative that companies understand both requirements and data they have collected before becoming involved in a regulatory compliance review or desk audit of their employment practices, including hiring.

Notably, regulations governing hiring practices have become increasingly more stringent since the beginning of the Obama administration in 2008. Federal agencies such as the OFCCP (Office of Federal Contract Compliance Programs) and the EEOC (Equal Employment Opportunity Commission) are scrutinizing hiring practices for all demographic groups, however, there is a strong push for increased scrutiny of the hiring practices with respect to veterans and individuals with disabilities. New regulations established by the OFCCP regarding veterans and individuals with disabilities went into effect in March 2014 for any federal contractor with 50 or more employees in one location and \$100,000 or more in government contracts since 2003. With the bar so low, it is not difficult for even small

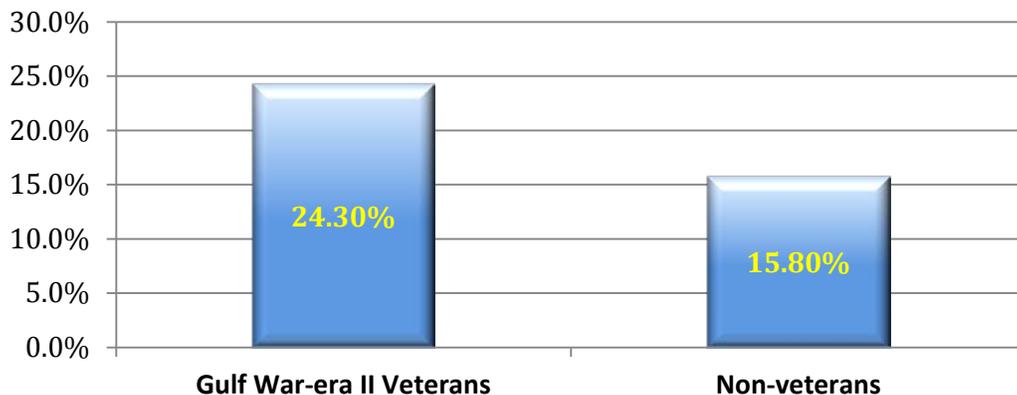
companies to meet this threshold. The new regulations require employers to hire protected veterans based on a benchmark set by the OFCCP (currently 7.2 percent). Contractors also have the option of setting their own hiring benchmark for veterans based on their specific labor market, but they must provide documentation with respect to application rates, hire rates, recruitment efforts, and available data. Data related to the setting of such benchmarks must be maintained for three years. The OFCCP has also set a utilization goal for individuals with a disability for each job group in a contractor's workforce (currently seven percent).

Why focus on unemployment rates?

In the early years following the passage of the Civil Rights Act of 1964, employment discrimination lawsuits were typically based on a very broad idea of protected class -- specifically gender or race. More recently the Department of Labor (DOL) is working to clearly define and protect other specific groups. With more data available and a greater ability to capture detailed information on individuals, the DOL has the ability to more comprehensively evaluate hiring trends and potential sources of disparities that may be the result of allegedly discriminatory policies or practices.

Take, for example, what the unemployment rate of veterans might say about the hiring trends of employers. While unemployment status for Gulf War-era II veterans in the 20-24 year-old age bracket is higher compared to older veterans, overall unemployment for that age group, regardless of veteran status, is high as these workers are just beginning their careers.

Unemployment Rate of Males Aged 18-24 Years Old



Male Gulf War-era II veterans 18-24 years of age had an unemployment rate of 24.3% in August 2013, compared to 15.8% for male non-veterans ages 18-24.¹ However, people with disabilities face twice the unemployment rate as non-disabled workers. About 26% of Gulf War-era II veterans reported having a service-connected disability in August 2013² compared to an overall estimate of 12% of the total U.S. population.³ Both the OFCCP and the EEOC believe this unemployment rate is due, in part, to reasonable accommodation not currently being made by many employers.

The new regulations are intended to encourage employers to make all due reasonable accommodations to hire, train and retain veterans and individuals with disabilities. The increased emphasis on these two protected groups may be due, in part, to the significant overlap between them.

Increased data awareness creates compliance challenges for employers

These new OFCCP regulations may increase the workload of HR EEO compliance officers as they strive to comply, while facing numerous challenges. For example, employers will find limited reliable national data on veterans and individuals with disabilities, as well as potentially a lack of company data to accurately analyze their compliance efforts. While the new regulations on protected veterans and individuals with disabilities went into effect in March 2014, the OFCCP has said that it will give contractors a year to implement the new requirements. Time is of the essence.

While the regulations for assessing hiring efforts of veterans allow for either national or local benchmarks, in many cases local data may not be helpful, and national data may not accurately reflect the availability of recently discharged or disabled veterans within the recruitment area. Nor will national data necessarily reflect variations in the labor force by geographic area. A particular geographic area, for example, may have a small population of protected veterans but a large population of individuals with disabilities. The key is to understand the availability within the workforce and collect the data to reflect it.

The regulations provide workers the opportunity to self-identify as veterans or as having a disability at the pre- and post- offer phases, however many companies report an unwillingness by applicants and hires to identify themselves. This increases the pressure on HR departments, which are already responsible for collecting and securely maintaining three years-worth of data on both protected veterans and people with disabilities, including current employees, applicants and hires. While the current data on veterans doesn't provide as much information as one might like, the public

data on people with disabilities is currently even less available or helpful for developing a defensible benchmark. This is because the American Community Survey (ACS) disability questions were changed in 2008 which eliminated continuity with previous ACS surveys. The final rule acknowledges ACS limitations, and consequently adopts a single, national utilization goal to be used in coordination with job groups already familiar to contractors.

The OFCCP has published the Voluntary Self-Identification of Disability form (Form CC-305) that contractors must use to invite current employees, applicants and hires to self-identify as having a disability. Furthermore, contractors are required to review and analyze these data, and submit information on recruitment efforts related to Section 503 (individuals with disabilities) and Section 4212 (protected veterans) AAPs. As these new regulations indicate, HR is now responsible for cataloging and securely maintaining these data. Security is critical and challenging from a privacy standpoint. Often people with disabilities are hesitant to self-identify because they see it as an invasion of privacy and are concerned that being identified as disabled might lead to discrimination.

Federal contractors and sub-contractors must be aware of these data issues and attendant security risks, as OFCCP implemented new data and document requirements for all compliance reviews conducted after October 16, 2014. Previously, the Itemized listing contained 11 items but it has been expanded to 22 items, seven of which reflect the requirements contained in the new Veterans (Section 4212) AAP and the new Individuals with Disabilities (Section 503) AAP. The bottom line is that federal contractors should take steps to collect the appropriate data, understand the impact of their recruitment and hiring practices, and analyze the data in the context of their actual policies and practices. Doing so will minimize HR headaches and negative surprises in the event of an OFCCP compliance review.

NOTES

¹ “Employment Situation of Veterans Summary,” Table 2B, Bureau of Labor Statistics Economic News Release, MARCH 20, 2014. [WWW.BLS.GOV/NEWS.RELEASE/VET.NR0.HTM](http://www.bls.gov/news.release/vet.nr0.htm)

² “Employed persons 18 years and over by veteran status, presence of service-connected disability, period of service, and class of worker, August 2013, not seasonally adjusted,” Table 8 Bureau of Labor Statistics Economic News Release, March 20, 2014.
www.bls.gov/news.release/vet.nr0.htm

³ “Disability Characteristics,” Table S1810, U.S. Census Bureau 2008-2012 American Community Survey, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5_YR_S1810&prodType=table
