

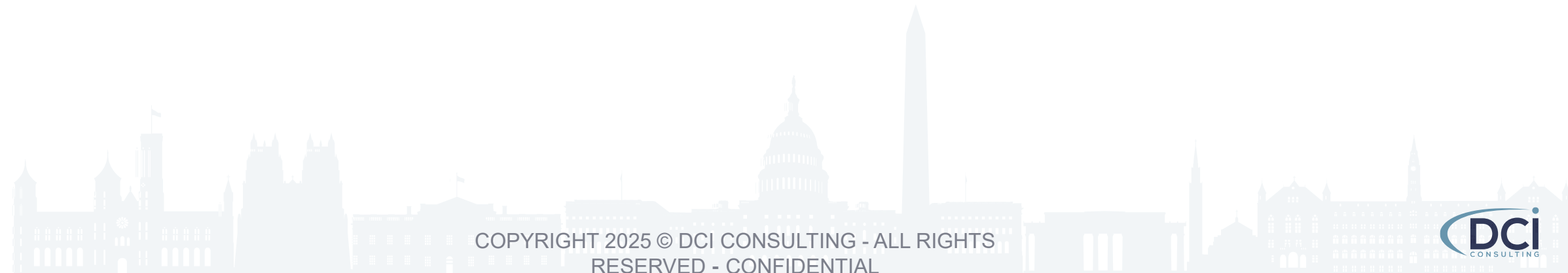
# Affirmative Action for Federal Contractors

Summer 2025 Update

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*Brittany Dian-Hansell, M.S. and Lily Kerr, M.S.*

July 23, 2025



# Speakers



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# DCI: Data Driven – Client Focused

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## Our Mission

Advancing non-discrimination and fairness in the workplace by implementing merit-based and skill-focused employment practices.

## Our Vision

We believe every person deserves equal opportunity and fair treatment in the workplace and beyond.

# How DCI Can Help



## Compliance

- VEVRAA and Section 503 AAPs
- State affirmative action and non-discrimination
- EEO-1 and VETS-4212 reports
- DOL compliance review support
- State pay reporting
- Pay transparency
- Proactive guidance on regulatory change
- DEI risk mitigation



## Selection and Assessment

- Job analysis
- Selection procedure development and validation
- Expert evaluation/bias audit of HR systems, including artificial intelligence



## Workforce Analytics

- EEO disparity analyses
- Damage calculations
- Non-discrimination in employment plans
- Reduction-in-force analyses
- Barrier analyses



## Pay Equity and Compensation

- Pay equity studies
- Pay compression studies
- Wage gap studies
- Job architecture development
- Market benchmarking
- Pay band creation
- Executive compensation reviews
- Bonus program reviews



## Litigation Support

- Consulting expert in applied research in class action litigation
- Testifying expert in case strategy, expert reports, & sworn testimony
- Expert reviews of AI-based hiring procedures

# Webinar Format

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- Participant phone lines are **muted**
- **Submit questions** by sending an email to [questions@dciconsult.com](mailto:questions@dciconsult.com)
- If you have any **technical difficulties during the call**, please email [questions@dciconsult.com](mailto:questions@dciconsult.com)

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# Agenda

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**Regulatory Overview**

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**2025 and Beyond**

# Important Note:

- OFCCP has recently announced several proposed changes to the 503 & VEVRAA regulations, as well as how they will be enforced moving forward
- The intent of this webinar is to first cover the regulations and required reporting **as they stand currently**, i.e. as of July 2025
- The final section of the presentation summarizes the recently proposed changes as well as further potential changes down the road



# Regulatory Overview

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Updates to Agencies, Regulations, and Requirements

# EEOC, DOL, and OFCCP

## **Equal Employment Opportunity Commission**

Prevents and remedies discriminatory practices through the enforcement of federal anti-discrimination laws and by providing education, outreach, and technical assistance to employers and the public

## **Department of Labor**

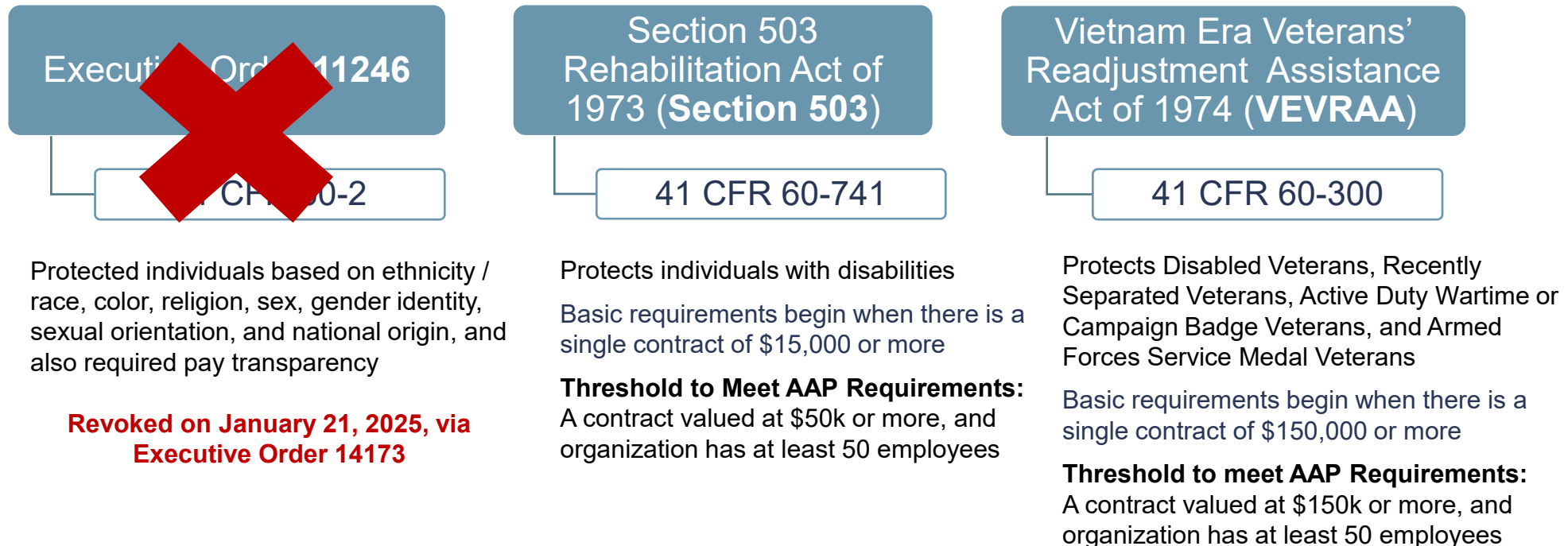
Federal agency responsible for protecting worker's rights, workers' well-being, and enforcing labor laws in the United States

## **Office of Federal Contract Compliance Programs**

Oversees compliance with federal regulations governing federal contractors and subcontractors

# OFCCP Jurisdiction

OFCCP is responsible for assuring that **employers doing business with the Federal Government** comply with the equal employment opportunity (EEO) and affirmative action provisions of their contracts



# Executive Order 14173

- On January 21, 2025, the White House and President Donald Trump issued an Executive Order: "[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)", which revoked Executive Order 11246
  - Ended race/ethnicity- and sex-based affirmative action in employment
  - Focuses on non-discrimination in employment and “illegal” or unlawful DEI practices in violation of Title VII and other anti-discrimination laws
  - March 2025, EEOC and DOJ issued two technical assistance documents focused on this administration's interpretation of illegal DEI
    - [What To Do If You Experience Discrimination Related to DEI at Work](#)
    - [What You Should Know About DEI-Related Discrimination at Work](#)

# What is “Illegal DEI?”

## The law has not changed:

- Quotas
- Preferences
- Set-asides
- Any selection procedure that supersedes merit selection procedures

Programs that exclude members of a particular group

Creating a hostile work environment through DEI training that is discriminatory in nature

Limiting, segregating, or classifying employees in ways that affect their status or deprives them of employment opportunities

# EEO Laws & Directives

More details on what has *changed* and what is the *same*...

Enforced by EEOC Relevant to all public & private employers					Enforced by OFCCP Relevant to federal contractors		
Laws / Directives	Title VII of the 1964 Civil Rights Act	1967 Age Discrimination in Employment Act (ADEA)	1990 Americans with Disabilities Act (ADA)  2008 amendment	1991 Civil Rights Act	Rescinded Jan '25 1965 Executive Order 11246	1974 Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA)	Section 503 of the 1973 Rehabilitation Act
	Race, color, religion, sex*, and national origin	Individuals who are 40 or older	Individuals with disabilities	Cannot reduce group differences via within-group norming or other adjustments	Race, color, religion, sex, sexual orientation, gender identity, or national origin	Protected veterans	Individuals with disabilities

*\*Includes pregnancy, sexual orientation, and gender identity*

# Reports and Analyses

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## Requirements for Protected Veterans and Individuals with Disabilities

# Required Affirmative Action Reports

## Section 503 AAP (Disability)

Policy & Procedures Narratives

Data Collection Analysis (hires/applicants)

Disability Utilization Analysis

Outreach and Recruitment Effectiveness\*

503/VEVRAA Executive Summary\*

## VEVRAA AAP (Veteran)

Policy & Procedures Narratives

Data Collection Analysis (hires/applicants)

Veteran Benchmark

Outreach and Recruitment Effectiveness\*

503/VEVRAA Executive Summary\*

\*Report is not required, but is provided as a supplement to required reports



# Data Collection Analysis (44k)

- Requires contractors to document (and maintain for 3 years) the following data points:
  - The number of applicants who self-identify as protected veterans/individuals with disabilities
  - The total number of job openings and total number of jobs filled
  - The total number of applicants for all jobs
  - The number of protected veterans/individuals with disabilities hired
  - The total number of applicants hired
- Report is one way for contractors to “assess the effectiveness of [their] outreach and recruitment efforts”

# Disability Utilization

**OFCCP has set a 7% utilization goal for individuals with disabilities**

- Contractors are required to solicit disability status from applicants on a voluntary basis both Pre- and Post- Offer
  - Employee disability status should also be solicited **at least** every 5 years
- Contractors are required to conduct an annual utilization analysis comparing the workforce to the established 7% goal
  - For each job group, determine underutilization using any difference rule

***Regardless, contractors should engage in outreach to the Individuals with Disabilities population***

# Veterans Hiring Benchmark

**OFCCP will publish the national percentage of veterans in the civilian labor force on its website**

- Contractors are required to solicit veteran status from applicants on a voluntary basis both Pre- and Post- Offer
- Contractors are required to annually set a hiring benchmark for each establishment (not job group)
  - OFCCP typically publishes the national percentage on an annual basis, but their webpage remains offline
  - Based on the available data and following agency methodology from previous years, OFCCP would establish a **5.1% benchmark** for the 2025–2026 period if it were maintaining its usual update schedule.
  - In the absence of official guidance, contractors may reasonably choose to adopt the newly calculated 5.1% figure or continue using the previously published 5.2% benchmark, effective as of March 31, 2024.

***Regardless, contractors should engage in outreach of the Protected Veteran population***

# Additional Compliance Items

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Going Beyond Your 503 & VEVRAA AAP Reports

# Outreach & Recruitment

*Required under Section 503 & VEVRAA*

- Covered federal contractors must evaluate outreach efforts using pre-established criteria to evaluate the totality of outreach effectiveness, **and document all efforts**
  - Examples of Measurement – Quantitative
    - Increases in Individuals with Disability (IwD) and Veteran Applicants and Hires Overall
    - Increases in Overall Employment Percentages of these groups
  - Examples of Measurement – Qualitative
    - Fostering goodwill in the community
    - Brand recognition as an employer of choice for IwDs and protected veterans
- **Regardless of whether the Section 503 Utilization goal or the Veteran Hiring Benchmark are met, contractors are required to engage in outreach and recruitment for these populations**

# Mandatory Job Listing

*Required under VEVRAA*



Learn more about  
DCI's Mandatory  
Job Listing Service!

- All job openings must be listed with the state/local employment service delivery system – with the following exceptions:
  - The job will last fewer than 3 days
  - The job is an executive level
  - The job will be filled internally
- Partner with local and nationwide groups to expand reach and utilize available job boards

# Reasonable Accommodations

*Required under Section 503 and Americans with Disabilities Act (ADA)*

- Ensure employees are aware of the correct procedure for requesting reasonable accommodations
  - How to submit requests, documentation to provide, expected timeline for decisions, etc.
- Document **all** accommodations requests, when they were made, what the outcomes were, etc.
- A written accommodations policy is not required, but is considered a best practice in promoting a smooth and efficient process for requests
- Ensure that company websites are accessible for IwDs and that there are clear channels for applicants seeking accommodations

# Annual Reporting

## *Required Federal Filings*

- **EEO-1s**

- Mandatory annual data collection that requires all employers with 100 or more employees to submit workforce demographic data, including data by job category, sex, and race/ethnicity.

- **VETS-4212**

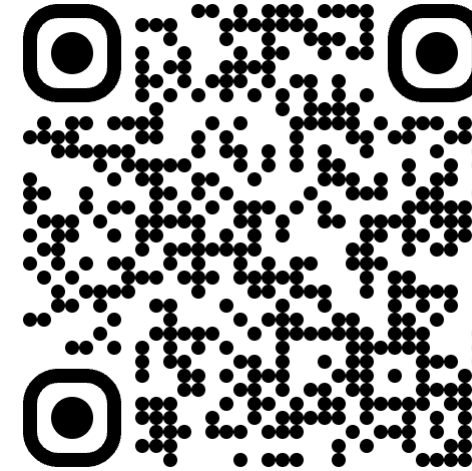
- Mandatory annual data collection for employers with federal government contracts or subcontracts worth \$150,000 or more. VETS-4212 is required to be filed between August 1 and September 30 each year and includes workforce demographic data, data by job category, and protected veteran status.



# State Reporting

## *Required for Covered Employers*

- List of notable reporting in effect as of this webinar:
  - State Pay Reporting
    - California Pay Data Reporting
    - Illinois Equal Pay Registration Certificate
    - Massachusetts Pay Reporting
  - State AAP Reporting
    - Minnesota
    - New Jersey
    - Wisconsin
- Recommend consulting [DCI State Legislation Tracker](#)
  - Features an interactive map with comprehensive list of laws – in effect and proposed
  - DCI also posts regular updates on state compliance laws on the [DCI blog](#)
    - ***Subscribe to get DCI Alerts delivered directly to your inbox!***



# Non-Discrimination Analytics

## *Recommendations*

- Conduct any race/sex analysis under attorney-client privilege
- Title VII of the Civil Rights Act
  - Prohibits discrimination in employment, including race/sex discrimination
  - Recommend analyzing the following annually:
    - Personnel Activity
      - Applicants/Hires
      - Promotions
      - Terminations
      - Can be analyzed as part of a Non-Discrimination in Employment Plan (NDEP)
    - Compensation
      - Use statistical methods (when appropriate) leveraging predictive data
      - Consider all forms of compensation

# 2025 and Beyond

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Predicting What's to Come in Compliance

# Recent OFCCP\* News

- On June 27, 2025, OFCCP [released a statement](#) outlining their plans to enforce EO 14173
  - The agency is inviting contractors to report on efforts they have made to "wind down" their compliance with EO 11246
  - Contractors have 90 days to voluntarily provide a description confirming review of EO 11246 efforts, whether any modifications were deemed necessary, and (if so) specify such modifications and how they will be implemented
- On June 30, 2025, the agency also published [significant proposed revisions](#) to the Section 503 regulations, in addition to minor revisions for VEVRAA
  - 7% utilization goal and self-identification of disability status rescinded, as well as the data collection analysis, aka 44(k) reporting
  - VEVRAA regulation removes references to EO 11246
  - The Noticed of Proposed Rulemaking is now open for public comment

**\*Note:** The agency is slated to be abolished in Fiscal Year 2026 (detailed later in this section), so it is unclear if, or how long, these proposed changes will be in effect.

# Recent OFCCP News (cont.)

- On July 2, 2025, the Secretary of Labor announced the abeyance on enforcement Section 503 and VEVRAA has been lifted
- OFCCP has announced they will take the following actions:
  - Resume complaint investigations that had been paused, and allow investigations of new complaints to move forward
  - All 503/VEVRAA reviews "frozen" or pending will be administratively closed, due to the entanglement of the regulations with EO 11246
    - November 2024 CSAL effectively rescinded
    - Contractors can expect administrative closure letters for all active reviews
  - There will be no Contractor Portal certification for 503/VEVRAA

# The Future of Compliance: 2026 and Beyond

- EEOC will continue to have a heavier hand in enforcement than OFCCP
  - Acting Chair Andrea Lucas issued [request for data from law firms](#)
  - OFCCP expected to be abolished, per [fiscal year 2026 proposed budget for DOL](#) – Section 503 slated to be enforced by EEOC, VEVRAA by Veterans' Employment and Training Service (VETS)
- States will likely take the lead in compliance reporting as federal guidance is modified
  - In addition to AAP and Pay reporting, there is also an increased interest in enforcing AI use by employers – [several state laws](#) either in effect or proposed
- [DOJ's Civil Rights Fraud Initiative](#)
  - Announced on May 19, 2025
  - Potential for employers to be sued under the False Claims Act
- Still to come: [Federal Acquisition Regulation \(FAR\) interim final rule](#)
  - Should provide direction on enforcement of EO 14173

# Thank you for your attention!

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