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Increase Responses to Disability Self-Identification Form

By Allen Smith 2/5/2015

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Employers that are not federal contractors are prohibited from asking whether applicants or employees have disabilities, except in response to a reasonable accommodation request from someone whose disability is not obvious, and then only to ask for documentation to back up the request.

Federal contractors, by contrast, must ask applicants and—every five years—their workforce to complete disability self-identification forms (http://www.dol.gov/ofccp/regs/compliance/sec503/Voluntary_Self-Identification_of_Disability_CC-305_SD_Edit1.24.14.pdf) as part of fulfilling their affirmative action requirements.

The response rate to the forms can be low—between 2 percent and 15 percent, estimates Connie Bertram, an attorney with Proskauer in Washington, D.C. Employers can improve response rates by explaining the affirmative action purpose of the form without hounding applicants and employees to respond, attorneys say.

Form's Purpose

“Employers should take the time to provide applicants and employees with information, such as in a cover letter, explaining the purpose of the form and why they are being asked to self-identify as being disabled,” Cara Crotty, an attorney with Constangy, Brooks & Smith in Columbia, S.C., told *SHRM Online*. “Without such an explanation, employees may question the employer’s ability and/or right to seek the information at all. Further, when that applicant does not get hired, or that employee gets demoted or discharged, they may be less likely to presume that the questionnaire was somehow related to the decision-making process.”

New affirmative action regulations under Section 503 of the Rehabilitation Act took effect in 2014. They require that contractors invite applicants to self-identify as individuals with disabilities at both the pre-offer and post-offer phases of the application process, using language prescribed by the Office of Federal Contract Compliance Programs. The regulations also require that contractors invite their employees to self-identify as individuals with disabilities every five years.

“The company as a whole benefits when it is able to provide comprehensive and accurate reports to the federal government,” Crotty observed. “Although some employees may not receive a direct benefit by responding to the survey, the more responses that an employer receives, the better able it will be to form an accurate reflection of the representation of individuals with disabilities in its workforce and applicant flow. This information will assist the employer not only with meeting its reporting obligations but [also with] designing more-effective outreach and recruitment, and potentially with designing internal procedures for ensuring equal employment opportunities.”

Build Enthusiasm for Program

“Although I believe that HR should encourage employees during the onboarding and orientation program to self-disclose and take advantage of contractors’ affirmative action programs and accommodation policies, I would not recommend that they ask individual applicants or employees, unless the need for an accommodation is obvious or requested,” Bertram said.

“The voluntary disclosure form for new hires should be included in employees’ new-hire documentation,” she continued. “Typically, forms are sent electronically to new employees by e-mail. A link in the e-mail takes the employee to a portal for the completion of all of the paperwork associated with their hiring. The form should be easily accessible, easy to complete, and have features that make it accessible to employees with vision impairments and other employees who may have difficulty completing the form. Employers should also offer employees accommodations if they need assistance completing the form.

“It is critical that employees have confidence that their disclosure will be confidential and will not negatively impact their application or employment,” Bertram noted. “In addition, they need to understand the contractor embraces its affirmative action and accommodation obligations. Messages consistently delivered from the top and executed by HR and hiring managers will encourage participation by building confidence in and, in some instances, enthusiasm for the program.”

Reasonable Accommodations

The disability self-identification form gives employees an opportunity to start conversations about needed reasonable accommodations without fear of retaliation, observed Debra Friedman, an attorney with Cozen O’Connor in Philadelphia and New York City. She recommends that federal contractors include with the self-identification form instructions on how to request reasonable accommodations with the organization. “If there is a reasonable accommodation form, include it. Take that next step,” she remarked.

Employees may be given advance notice, in person or at a meeting, that the form is coming, Friedman noted. “It is appropriate to set a deadline. It is OK to send out one reminder before it’s due and one after,” but that’s enough, she said. Otherwise, the contractor could look like it is harassing employees to complete the form.

Contractors can’t track who has responded and who hasn’t, as that would suggest retaliation, Friedman cautioned.

Surveying the workforce is required every five years because employees may develop disabilities or may not have initially felt comfortable sharing that information but do later, Friedman added.

Don'ts

Bertram cautioned employers on the following actions:

- Do not approach employees individually if they elect not to complete the form.
- Do not take any action against employees who elect not to complete the form.
- Do not disclose any acquired information about employees beyond those who have a need to know.
- Do not publicize results in a way that individual employees can be identified.
- Do not hound employees who have not responded or do anything else that would make them feel uncomfortable.
- Do not develop a program that, in an effort to be “cute,” belittles individuals with disabilities.

“The keys, in my mind, are management support, confidentiality and seamless access,” Bertram said.

“Like when they adopted business ethics policies in 2008 and 2009, the contractors should try to generate energy and enthusiasm for the process. They can adopt diversity and inclusion as key values of the contractor and emphasize that voluntary disclosures are critical to those values. In addition, through company intranet postings and posters in their facilities, employers can market the importance of the voluntary disclosure process.”

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