

CHANGES TO VETS 100 REPORTING CATEGORIES

On May 19, 2008, the Veterans’ Employment and Training Service (“VETS”) published a final rule in the Federal Register to implement changes to affirmative action reporting requirements necessitated by amendments to the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (“VEVRAA”) enacted via the Jobs for Veterans Act of 2002 (“JVA”). The new reporting requirements are applicable to all reports filed with VETS based on the 2008 calendar year, which are due on September 30, 2009. The amended reporting requirements necessitate a new filing form (“VETS-100A”) applicable to all contracts entered into after December 1, 2003 while the old requirements, as well as the previous filing form (“VETS-100”), are still to be used for all contracts entered into on or before December 1, 2003.

The JVA amended the reporting requirements under the VEVRAA in two significant aspects, and the new regulations track these amendments. First, for any contract entered into after December 1, 2003, a contractor is not required to submit a VETS report unless the contract is for at least \$100,000. This is a significant increase over the previous \$25,000 threshold. Secondly, the JVA changed the self-identification and veteran tracking categories as follows:

VEVRAA & VETS-100 Reporting Categories	JVA & VETS-100A Reporting Categories
Special Disabled Veterans	Disabled Veterans
Newly Separated Veterans	Recently Separated Veterans
Other Protected Veterans	Other Protected Veterans
Veteran of the Vietnam Era	Armed Forces Service Medal Veterans

The new VETS-100A form utilizes these new categories and abandons the old. The VETS-100A form must be submitted for all contracts and subcontracts entered into after December 1, 2003 or for any contract or subcontract entered into prior to that date that was subsequently modified and is for an amount greater than \$100,000. All unmodified contracts executed on or prior to December 1, 2003 continue to require a VETS-100 filing. If a contractor has outstanding contracts that fall under both definitions, it must file both a VETS-100 and a new VETS-100A. It should be noted that once a contractor is required to use the VETS-100A form, it may have to resurvey the workforce so as to ensure all employees who self-identified under the old categories can be correctly reported using the newly-defined categories, while still tracking any of the employees subject to the previous regulations. Further, contractors may have to adjust their written affirmative action plans. Duplication in the definitional section will be necessary if a contractor has government contracts falling under both sets of regulations.

If you have any questions, or would like an updated VETS-100 / VETS-100A survey form, please contact a member of Koley Jessen’s Employment, Labor and Benefits Group.

FEDERAL CONTRACTORS REQUIRED TO USE E-VERIFY

All federal government contractors will soon be required to use the federal E-Verify program to verify the employment eligibility of all employees assigned to work on federal contracts. On June 6, 2008, President George W. Bush amended Executive Order 12989 to direct federal departments and agencies to require contractors, as a condition of each future federal contract, to agree to electronically verify the employment eligibility of their workforce with the verification system designated by the Secretary of Homeland Security. In a press conference following the release of the amended Executive Order, Secretary of Homeland Security Michael Chertoff designated E-Verify as the system to be used by all federal contractors. E-Verify (formerly known as the Basic Pilot Program) is an online verification system operated jointly by the Department of Homeland Security (the “DHS”) and the Social Security Administration (the “SSA”). E-Verify allows employers to verify an individual’s Social Security Number against the SSA database and an individual’s work eligibility against the DHS records.

On June 12, 2008, proposed regulations were published in the Federal Register to implement the requirements of the President’s Executive Order. Pursuant to the proposed regulations, federal contractors (as well as certain subcontractors) are required to use E-Verify to ascertain the work eligibility of all employees assigned to work on future federal contracts.

This requirement extends to a contractor's existing employees that are assigned to work on the federal contract as well as all individuals hired after the federal contractor enrolls in E-Verify. The proposed regulations also provide a clause to be inserted in future federal contracts consistent with the President's Executive Order. Interested parties have until August 11, 2008 to submit comments with respect to the proposed regulations.

Please contact a member of Koley Jessen's Employment, Labor and Benefits Group if you have any questions regarding your responsibilities pursuant to the President's Executive Order or the proposed regulations or if you need information regarding enrollment in E-Verify.

PAYMENT OF PTO UPON TERMINATION OF EMPLOYMENT

The Nebraska Wage Payment and Collection Act (the "Act"), as amended by the Nebraska Unicameral in March of 2007, requires that employers pay out any accrued, unused vacation time to employees upon termination of employment. While payment of vacation time is obligatory, the Act affords employers the discretion to establish policies regarding payment of accrued, unused sick leave and other forms of paid leave. These two principles have created a gray area for Paid Time Off ("PTO") policies that blend vacation leave and sick leave into one bank. In *Gallentine v. B & R Stores, Inc.*, the District Court of Lancaster County, Nebraska addressed this discrepancy and held that PTO is different than vacation leave and therefore employers are able to determine by policy whether accrued, unused PTO is payable upon termination of employment.

In *Gallentine*, the employer's PTO policy provided that no accrued, unused PTO would be paid to an employee upon termination if the employee failed to give two weeks' notice of resignation, was involuntarily terminated or had less than the required amount of continuous service as described in the policy. The District Court reviewed the Nebraska Supreme Court's decision in *Roseland v. Strategic Staff Mgmt.* as well as the Unicameral's response thereto, and determined that PTO is not the same as vacation leave. The court reasoned that while PTO does constitute "wages" under the Act, it does not represent vacation leave and therefore is not includable in wages due and payable upon termination of employment absent a specific agreement providing for the same.

This decision is capable of being appealed, but it does provide some insight into how at least one Nebraska court is distinguishing PTO from vacation time. Please contact a member of Koley Jessen's Employment, Labor and Benefits Group if you have any questions regarding this decision and the potential impact on your employment policies.

FEDERAL MINIMUM WAGE TO INCREASE

On July 24, 2008, federal minimum wage will increase to \$6.55 per hour. This is the second in a three-phase increase to the minimum wage under the Fair Labor Standards Act ("FLSA"). The first increase occurred on July 24, 2007 and raised minimum wage to \$5.85 per hour. The final increase will occur on July 24, 2009 and result in a federal minimum wage of \$7.25. All employers subject to the FLSA should ensure that their payroll is updated to reflect this increase. If an employer is located in a state with a higher minimum wage than that required under the FLSA, the state's minimum wage should be followed. If you have any questions about whether you are subject to the FLSA or about your state's minimum wage, please contact a member of Koley Jessen's Employment, Labor and Benefits Group.

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