Affirmative Action Obligations in Recruitment and Recordkeeping at the University of Rochester

The University regularly enters into contracts with the federal government, and as a result, is a federal contractor subject to regulations issued by the Department of Labor and enforced by the Office of Federal Contract Compliance Programs (“OFCCP”). The regulations require us to fulfill certain Affirmative Action obligations relating to recruiting for open positions and to recordkeeping regarding job applicants. The regulations include:

- Executive Order 11246 (prohibits discrimination and requires affirmative action to ensure all employment decisions are made without regard to race, color, religion, sex or national origin)
- Section 503 of the Rehabilitation Act of 1973 (prohibits discrimination and requires affirmative action in the employment of qualified individuals with disabilities)
- The Vietnam Era Veterans’ Readjustment Assistance of 1974 (VEVRAA) (prohibits discrimination against specified categories of veterans and requires affirmative action in the employment of such veterans)

These regulations impose a number of obligations that are of particular importance to Human Resource professionals, supervisors, and administrators involved in recruitment, selection, and recordkeeping:

1. **Non-Discrimination in Recruitment.** Consistent with the legal obligations mentioned above and with University policy, the University takes steps to ensure that employment decisions are made in a non-discriminatory way. To ensure non-discrimination in the recruitment process,
   a. Hiring decisions must be made without regard to an applicant’s race, color, religion, ethnicity, sex, disability, veteran or other protected status (though outreach efforts should be engaged in to attract diverse candidates, as set forth in #3 below).
   b. Reasonable accommodations must be provided, upon request, to qualified applicants with disabilities in order to provide equal access and eliminate discriminatory obstacles to employment opportunities. Among other things, reasonable accommodations in the recruitment process may include: providing accessible forms to a visually impaired applicant, ensuring the interview site is accessible for any applicant with a mobility impairment, having an interpreter available for a hearing impaired applicant, etc.

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1 Although this summary is focused on obligations in employee recruitment, the University has numerous other equal opportunity and non-discrimination obligations in employment (including providing equal opportunity to advance and retain disabled applicants and veterans, to ensure equitable and non-discriminatory pay, promotion, and termination practices, and to provide reasonable accommodations to qualified disabled employees). See Affirmative Action Policy 102 at [http://www.rochester.edu/working/hr/policies/pdfpolicies/102.pdf](http://www.rochester.edu/working/hr/policies/pdfpolicies/102.pdf). Additional equal opportunity obligations with respect to accessibility and non-discrimination extend to students and patients, as a place of public accommodation and due to federal financial assistance received by the University.
2. **Recordkeeping Regarding Job Applicants.** Recordkeeping Obligations Pertaining to Current Employees. University policy requires that the University:

   a. Retain, for a minimum of 3 years, records relating to all job applicants who (1) have expressed interest in a particular position, (2) possess the basic qualifications for the position, and (3) were considered for the position. (See University Policy 133 http://www.rochester.edu/working/hr/policies/pdfpolicies/133.pdf.) Records to be retained include, but are not limited to, job descriptions, job postings, advertisements, resumes/curriculum vitae, correspondence (including emails relating to job search and applicants), scoring or ranking sheets, and interview notes. (Note: When medical information is submitted in support of a request for a reasonable accommodation, such records must be kept in a separate file, under lock and key, and must be treated confidentially.)

   b. Attempt to collect, and once collected, to maintain demographic information from job applicants who meet the basic qualifications of the open position, including race, ethnicity, gender, disability status, and veteran status. The University captures the demographic information in HRMS, its primary online application system, during the application process, so it is imperative that all applicants apply online. **Note:** Basic qualifications for a position must be determined in advance of posting the position, and individuals whose applications are not submitted via the online system are not considered applicants.

   c. Once a job offer has been extended to an applicant, **effective October 1, 2014,** we must again invite the applicant to self-identify veteran and disability status. This second invitation will be accomplished through HR for staff, Nursing Recruitment for nurses, and the Deans’ offices (unless delegated by Deans to the departmental level) for faculty.

   d. If a candidate who meets the basic qualifications of the job withdraws his or her name from consideration, you must retain records relating to that applicant. But, if you have not already solicited demographic information from the candidate, you need not do so.

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2 For employees, federal contractors are required to retain all personnel records pertaining to a current employee’s hiring, assignment, promotion or non-promotion, demotion, transfer, layoff, termination, rates of pay or other terms of compensation, selection for training or apprenticeships, requests for reasonable accommodation, physical examination results, job ads and postings, applications and resumes, tests and test results, and interview notes. Personnel records must be retained in accordance with the length of time specified for each type of record (e.g., I-9s (3 years), pay records (6 years), workers compensation records (18 years), certain health and safety records (30 years or longer), other personnel records (6 years from termination). See Retention Policy at https://www.rochester.edu/adminfinance/RetentionUniversityRecords.pdf (particularly pp. 7-8).

3 The College of Arts and Sciences utilizes its pre-existing online application system known as FORT for faculty hires.
e. Supervisors must indicate the outcome of the application process for all applicants in the existing online application system prior to the successful candidate being offered the position. The application of accurate disposition and reason codes for each applicant for a position is essential to our Affirmative Action compliance obligations.

f. If an external resume database (such as Monster.com or Careerbuilder.com) is searched in connection with a job opening, we are required to:
   i. Maintain a record of the position for which each search of the database was done and the date of the search;
   ii. Keep records of the substantive search terms that were used in the search (which may only include basic qualifications) and the date(s) of each search; and
   iii. Keep all of the information listed in 1(a) above for all applicants who met the basic job qualifications for the position and who were considered.

3. Recruitment Efforts. The University (and any external search firm retained) is required to make "good faith efforts" to recruit and hire underrepresented minorities, women, disabled individuals, and veterans. In support of this effort the University currently engages in the following activities:
   a. Posts all open positions to a network of relevant websites, including diversity, veteran and military, disability, college/alumni, and general employment search engines on a daily basis (via membership with DirectEmployers). **Note:** Per federal regulation, all job advertisements need to reflect the University’s federal contractor status and should include the following: “EOE Minorities/Females/Protected Veterans/Disabled”;
   b. Posts job openings specifically in forums or organizations with “list serves” with high number of underrepresented minorities as recipients;
   c. Holds campus-wide workshop on Race and Ethnicity in Faculty Recruitment and Retention and participates in job fairs;
   d. Holds University-sponsored Diversity Conference and cultural fairs;
   e. Partners with community agencies that support the recruitment of underrepresented minorities, women, veteran and individuals with disabilities, such as: the Hillside Work-Scholarship Connection, the Health Care & Technology Youth Apprenticeship, Veterans’ Outreach Center, Urban League of Rochester, Association for the Blind and Visually Impaired (ABVI Goodwill), Rochester Rehabilitation Center, Monroe County’s Career Start Program, the Institute for Innovative Transition’s Project SEARCH, and local Veterans’ Employment offices.

4. Retention of External Recruitment Firms. Recruitment (or search) firms hired by the University must adhere to OFCCP and University record keeping and affirmative action requirements. Departments wishing to engage the services of a recruitment firm must send the contract to the Office of Counsel for review prior to a University representative signing it to ensure that specific
language regarding the firm’s agreement to adhere to the University’s affirmative action obligations is included.

5. **Selection/Adverse Impact Analysis.** The OFCCP requires employers to undertake an analysis of hiring, promotion, and termination decisions in order to determine whether there is any evidence of selection disparities based on race, gender or ethnicity. The University conducts this analysis as part of its yearly Affirmative Action program and engages in follow up as appropriate.

Questions about obligations under these regulations can be directed to either Morgan Levy, the University’s Equal Opportunity Compliance Director (275-7814) or Susan Wormer, Senior Counsel (276-3677).