

# Happy Memorial Day! A Quick Guide for Affirmative Action Programs for Hiring Veterans with Disabilities

## Labor & Employment Law Update

on May 26, 2021



With the upcoming Memorial Day holiday offering an opportunity to acknowledge and appreciate the sacrifice made by military families, it seemed a fitting time to revisit the legal nuances of providing preference in hiring veterans with disabilities. Veterans report high instances of service-connected disabilities,

including blindness, deafness, missing limbs, major depressive disorder, and post-traumatic stress disorder. Some laws require employers to provide preference to disabled veterans. Some employers voluntarily create affirmative action programs for veterans with disabilities. Here is what employers should know.

### Can an employer give preference in hiring to a veteran with a disability?

Yes. There is no law that prevents an employer from voluntarily creating a program that gives preference in hiring to qualified veterans with disabilities. Moreover, there are various laws in place that may require an employer to provide affirmative action to veterans. For example, the Vietnam Era Veteran's Readjustment Assistance Act (VEVRAA) requires all business with a federal contract or subcontract exceeding \$100,000 to take efforts to employ and advance veterans with disabilities. The Uniformed Services Employment and Reemployment Rights Act (USERRA) requires employers to make reasonable efforts and accommodations to return veterans with service-connected disabilities to their position prior to military service or to help qualify the veteran for a job of equivalent seniority, status, and pay.

### May an employer ask if an applicant is a disabled veteran?

Yes. While the Americans with Disabilities Act (ADA) generally prohibits employers from making medical inquiries, they may do so for affirmative action purposes. Therefore, an employer may ask applicants to voluntarily self-identify as a veteran with a disability if it is collecting this information to undertake affirmative action required by a veterans' preference law, or to provide benefits to these applicants through the employers' own voluntary program.

If an employer requests that applicants self-identify as a veteran with a disability, the request must clearly state that this information is intended for use solely in connection with its legal affirmative action obligations, or voluntary affirmative action efforts. Employers should also confirm with the applicants that the information will be kept confidential, and that the applicant's decision to disclose this information is completely voluntary. Keep all records of disability-related information in a separate, confidential file.

### What are some steps that employers can take to attract, recruit, and hire veterans with disabilities?

- Job postings and advertisements may encourage veterans with disabilities to apply and should explicitly state that the organization is an equal opportunity employer.
- Employers may send job opening information to organizations that job-train veterans and assist veterans with finding employment.
- Employers may attend job fairs that connect employers with qualified veterans searching for work.
- Employers should review all language used in job postings to make sure that nothing would dissuade a veteran with a disability from applying. Job postings should not include language calling for "excellent health" or listing required physical abilities if an individual with a disability would be able to accomplish the job function differently through an accommodation.
- Employers must provide accommodations to veterans with disabilities in the application process where necessary. For example, employers should provide applications and other written materials in an accessible format, whether that be in large print, Braille, or electronically. Employers should also conduct interviews in accessible locations.

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