



For your information

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EEOC Revises Guidance on Employing Veterans with Disabilities

The EEOC recently issued revised guidance explaining how the ADA and USERRA protect veterans with service-connected disabilities. Two question-and-answer guides focus on workplace issues employers and veterans alike face as former servicemembers transition to civilian jobs.

Background

Title I of the Americans with Disabilities Act (ADA), which is enforced by the Equal Employment Opportunity Commission (EEOC), generally protects job applicants and employees with disabilities against employment discrimination in the private sector and by state and local governments. The ADA Amendments Act (ADAAA) and the EEOC's implementing regulations, which took effect in 2011, significantly broadened the ADA's original definition of "disability" and the law's protections. (See our June 16, 2011 [For Your Information](#).)

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which is enforced by the Department of Labor, generally prohibits employment discrimination against job applicants and employees because of their military service or obligations. USERRA also provides certain reemployment rights and benefits for servicemembers and veterans, whether or not they have a service-connected disability.

In a November 16, 2011 [meeting](#), the EEOC heard expert testimony on the challenges recent veterans with disabilities face in transitioning from active duty to civilian employment. As an outgrowth of that meeting, the EEOC issued updated guidance to ensure that veterans and employers understand their rights and obligations under the ADA and USERRA.

EEOC Guide for Employers

In its recently revised [Guide for Employers](#) (Guide), the EEOC explains how the ADA and USERRA protect veterans with service-connected disabilities, and how employers can prevent discrimination in recruiting, hiring, and accommodating those veterans. Although both statutes cover veterans with disabilities, their protections differ.

As foreign deployments ebb, employers can expect a surge in former servicemembers seeking to transition to civilian employment. According to the EEOC, approximately 25 percent of recent veterans report having a service-connected disability. The ADA standards for determining whether a disability

exists differ from the standards used by the Departments of Defense (DOD) and Veterans Affairs (VA). Because most veterans with a military or VA disability rating are likely to be considered disabled under the ADA, the EEOC reminds employers not to assume that veterans with a VA disability rating cannot perform a job.

Although the ADA generally prohibits pre-offer disability-related inquiries, the Guide indicates that employers may ask applicants to voluntarily self-identify as individuals with disabilities or disabled veterans to comply with federal, state or local laws requiring affirmative action (including a veterans' preference law) or as part of a voluntary affirmative action program to benefit individuals with disabilities. The Guide lists steps employers should take in asking disabled veterans to self-identify.

INSIGHT

Recently proposed revisions to the Office of Federal Contract Compliance Programs' (OFCCP's) affirmative action regulations require pre-offer invitations to self-identify. (See our February 3, 2012 [For Your Information](#).) The EEOC indicates that this requirement would not run afoul of the ADA.

The Guide suggests where and how to advertise job vacancies so as not to discourage veterans with disabilities from applying. Along with examples of the types of accommodations that veterans may need to apply for or perform a job, the Guide lists resources employers can tap to find qualified veterans or develop appropriate accommodations for physical or psychological impairments.

Although both the ADA and USERRA require reasonable accommodations for veterans with disabilities, USERRA requires employers to go further. Under the ADA, employers with at least 15 employees must make reasonable accommodations to allow disabled individuals to secure jobs. USERRA imposes certain training and retraining requirements on employers regardless of their size. Under USERRA, employers must make "reasonable efforts" to reemploy returning veterans in their prior jobs or to help them qualify for different jobs whether or not they have a service-connected disability.

INSIGHT

Recent federal initiatives address issues relating to the employment of disabled individuals, including a proposed national utilization goal for federal contractors and new tax incentives for hiring certain disabled veterans. (See our [February 3, 2012](#) and [February 24, 2012](#) [For Your Information](#) publications.)

EEOC Guide for Wounded Veterans

The [Guide for Wounded Veterans](#) (GWV) addresses questions that injured veterans may have about returning to their former jobs or looking for new civilian jobs. The GWV discusses the kinds of accommodations disabled veterans may need to gain and maintain employment, and explains how

veterans can enforce their employment rights, particularly with respect to a failure to hire or reasonably accommodate.

As a result of the ADAAA's expanded definition of "disability," it is easier for veterans with a wide range of impairments to secure the ADA's protections. The GWV provides guidance for veterans on self-identifying disabled veteran status, answering employer questions about medical conditions, and requesting reasonable accommodations for physical or mental impairments pre- and post-employment.

Generally, private sector employers are not required to give hiring preference to disabled veterans. However, the Vietnam Era Veterans' Readjustment Assistance Act imposes affirmative obligations on certain federal contractors and subcontractors to hire and promote qualified disabled veterans. With respect to federal government jobs, the GWV highlights hiring and other preferences veterans receive under the Veterans' Preference Act and special hiring authorities.

Conclusion

The EEOC estimates that three million veterans have returned from military service over the past decade. In view of the anticipated drawdown of military operations abroad, the EEOC expects another one million veterans to return to civilian life over the next five years. Many of them will have disabilities.

Employers must be prepared to satisfy their obligations under both the ADA and USERRA, including hiring or rehiring, reasonably accommodating, and training or retraining returning veterans.

Buck Can Help

- Evaluate the impact of the EEOC's guidance on your recruiting, hiring, and reasonable accommodation policies and practices
- Review your EEO and anti-harassment policies
- Update employee handbooks as needed
- Train and educate managers and supervisors on ADA and USERRA requirements