

Employers Guide

Veterans and the Americans with Disabilities Act (ADA)



Each year, thousands of military personnel stationed around the world leave active duty and return to jobs they held before entering the service, or begin the search for new jobs.

Common injuries incurred by these veterans include missing limbs, burns, spinal cord injuries, post traumatic stress disorder (PTSD), hearing loss, traumatic brain injuries, and other impairments.

This guide describes how the ADA applies to recruiting, hiring, and accommodating veterans with disabilities, and provides information on laws and regulations that employers may find helpful if they want to make recruiting and hiring veterans with disabilities a priority.

What protections does the ADA provide to veterans with disabilities?

Title I of the ADA prohibits an employer from treating an applicant or employee unfavorably in all aspects of employment and privileges of employment -- because he has a disability, a history of having a disability, or because the employer regards him as having a disability. That means, for example, that it is illegal for an employer to refuse to hire a veteran because he has PTSD, because he was previously diagnosed with PTSD, or because the employer assumes he has PTSD.

Similarly, an employer may not refuse to hire a veteran based on assumptions about a veteran's ability to do a job in light of the fact that the veteran has a disability rating from the U.S. Department of Veterans Affairs (VA). The ADA also limits the medical information employers may obtain and prohibits disabilitybased harassment and retaliation.

Finally, the ADA provides that, absent undue hardship, applicants and employees with disabilities are entitled to reasonable accommodation to apply for jobs, to perform their jobs, and to enjoy equal benefits and privileges of employment (e.g., access to the parts of an employer's facility available to all employees and access to employer-sponsored training and social events).

Section 501 of the Rehabilitation Act applies the same standards of non-discrimination and reasonable accommodation as the ADA to Federal Executive Branch agencies and the United States Postal Service.



May an employer ask if an applicant is a "disabled veteran" if it is seeking to hire someone with a disability?

Yes. Although employers generally may not ask for medical information from applicants prior to making a job offer, they may do so for affirmative action purposes. An employer, therefore, may ask applicants to voluntarily self-identify as individuals with disabilities or "disabled veterans" when the employer is:

- undertaking affirmative action because of a federal, state, or local law (including a veterans' preference law) that requires affirmative action for individuals with disabilities; or,
- voluntarily using the information to benefit individuals with disabilities, including veterans with disabilities.

An employer also may ask organizations that help find employment for veterans with disabilities whether they have suitable applicants for particular jobs and may access websites on which veterans with disabilities post resumes or otherwise express interest in employment.

What steps should an employer take if it asks an applicant to self-identify as a "disabled veteran" for affirmative action purposes?

If an employer invites applicants to voluntarily selfidentify, the employer must indicate clearly and conspicuously on any written questionnaire used for this purpose, or state clearly (if no written questionnaire is used), that:

- the information requested is intended for use solely in connection with its affirmative action obligations or its voluntary affirmative action efforts; and
- the specific information is being requested on a voluntary basis, it will be kept confidential in accordance with the ADA, refusal to provide it will not subject the applicant to any adverse treatment, and it will be used only in accordance with the ADA.

Information collected for affirmative action purposes must be kept separate from the application to ensure that confidentiality is maintained.

May a private employer give preference in hiring to a veteran with a disability over other applicants?

Yes. Although the ADA prohibits discrimination "on the basis of disability," it does not prevent affirmative action on behalf of individuals with disabilities. Thus, a private employer may -- but is not required to -- hire an individual with a disability who is qualified (including a veteran with a disability) over a qualified applicant without a disability.

In addition, the **Vietnam Era Veteran's Readjustment Assistance Act (VEVRAA)** requires that businesses with a federal contract or subcontract in the amount of \$100,000 or more, entered into on or after December 1, 2003, take affirmative action to employ and advance qualified disabled veterans. VEVRAA also requires these businesses to list their employment openings with appropriate employment service delivery systems, and to give covered veterans priority in referral to such openings.

What types of reasonable accommodations may veterans with disabilities need for the application process or during employment?

While not all veterans with service-connected or other disabilities will need an accommodation or require the same accommodation, the following are examples of accommodations that some veterans may need to apply for or perform a job:

- leave for treatment, recuperation, or training related to their disability
- modified or part-time work schedules
- modification of supervisory methods, which may include breaking complex assignments into smaller, separate tasks, adjusting methods of communication (e.g., giving instructions in writing rather than orally), or providing some additional feedback or guidance.

May an employer ask a veteran with a disability whether a reasonable accommodation is needed if none has been requested?

Sometimes. During the application process, an employer may explain what the hiring process involves (e.g., an interview, timed written test, or job demonstration) and ask all applicants whether they will need a reasonable accommodation to participate in any part of the process. In addition, if an employer reasonably believes that a veteran with an obvious service-connected disability (e.g., a veteran who is blind or missing a limb) who is applying for a particular job will need a reasonable accommodation to do that job, the employer may ask whether an accommodation is needed and, if so, what type. Once a veteran with a disability has started working, an employer may ask whether an accommodation is needed when it reasonably appears that the person is experiencing workplace problems because of a medical condition.

Because many veterans may not view their servicerelated injuries as disabilities, they may not ask, or know that they are entitled to ask, for a reasonable accommodation. As a result, it may be critical for the employer to initiate a conversation with a veteran who is experiencing problems to determine an appropriate accommodation. Working together, the employer and veteran should identify what the veteran cannot do and then discuss ways to address any identified performance issue(s).

Are there are any laws that allow agencies to give special consideration to veterans with disabilities who are looking for jobs with the federal government?

Yes. Under the Veterans' Preference Act, veterans with and without disabilities are entitled to preference over others in hiring from competitive lists of eligibles and may be considered for special noncompetitive appointments for which they are eligible.

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws against employment discrimination due to race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person who has complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

The **EEOC** has the authority to investigate charges of discrimination against employers who are covered by the law. Our role in an investigation is to fairly and accurately assess the allegations in the charge and then make a finding. If we find that discrimination has occurred, we will try to settle the charge. If we aren't successful, we have the authority to file a lawsuit to protect the rights of individuals and the interests of the public. We do not, however, file lawsuits in all cases where we find discrimination.

We also work to prevent discrimination before it occurs through outreach, education and technical assistance programs.

Ensuring a level playing field

U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FOR MORE INFORMATION

800-669-4000 800-669-6820 TTY www.eeoc.gov

www.eeoc.gov/eeoc/publications/ada_veterans.cfm