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# VETERANS, DISABILITY, AND EMPLOYMENT

By James Schmeling



Masterfile

**M**ilitary veterans, National Guard members, and reserve service members have employment protections—including disability-related protections—under several national laws. These laws include the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), the Americans with Disabilities Act Amendments Act (ADAAA), and the Family and Medical Leave Act (FMLA).

USERRA prohibits discrimination in employment or adverse employment actions against service members and veterans: "An employer must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services."

USERRA also provides reemployment rights for those who are deployed from their civilian jobs, including those who have disabilities regardless of whether or not the disability is connected to a veteran's service. Related to service-incurred disability, USERRA specifically requires accommodations, including obligations to assist veterans in their reemployment to become qualified for their former job or other jobs through reasonable efforts to provide training or retraining, a step not required for non-veterans with disabilities under the ADAAA. USERRA's disability definition is less stringent than the ADAAA's, and it applies to all employers, unlike the ADAAA, which applies only to employers with 15 or more employees. Importantly, even the preamble of the law calls out the Supreme Court's affirmation of the protections and broad interpretation in all the law's iterations over 45 years, demonstrating long-term commitment to these issues: "This legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need. . . . And no practice of employers or agreements between employers and

unions can cut down the service adjustment benefits which Congress has secured the veteran under the Act." See *Fishgold v. Sullivan Drydock and Repair Corp.*, 328 U.S. 275, 285 (1946), cited in *Alabama Power Co. v. Davis*, 431 U.S. 581, 584-85 (1977); *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 n.9 (1991).

VEVRAA requires nondiscrimination in employment for veterans (not just Vietnam-era veterans) for federal contractors with contracts that meet certain thresholds (generally greater than \$100,000 per year) and that don't fall in certain exceptions (work out of country, work for certain state or local governments, and a few others). The protections are not only for those employed on the specific contracts but also for all employees of the contractor. VEVRAA also prohibits employment discrimination against certain veterans and requires affirmative action for specific veterans. Protected veterans with disabilities are defined as (1) "special disabled veterans" who have U.S. Department of Veterans Affairs (VA) disability ratings of 30 percent or greater, or if 10 to 20 percent who have serious employment disabilities, and those who have been discharged owing to service-connected disabilities; and (2) "disabled veterans" who are entitled to disability compensation (including those entitled except for receipt of retirement pay) and those who were discharged from active duty owing to service-connected disabilities.

The ADAAA provides for accommodations for those with disabilities, including those incurred in military service.

The FMLA specifically provides military care giver leave for the care of covered veterans with serious injuries or illness.

Certain states also grant employment and disability-related protections to veterans, and some even include affirmative employment provisions, while others have protections more expansive than the ADAAA for all people with disabilities, including veterans. Most state veteran-specific laws do not address disability directly, but they may provide additional leverage in addressing disability-related employment discrimination and rights.

In addition to employment protections, veterans (and thereby their employers) additionally have resources available related to their disability, underlying medical condition, and accommodations, including access to tax credits (VOW to Hire Heroes Act) for hiring veterans and veterans with disabilities. The federal government has specific veteran hiring authorities that include veterans with disabilities administered by the U.S. Office of Personnel Management, which may lead from temporary to regular employment. Resources from the VA, the U.S. Department of Labor (DOL), the U.S. Department of Defense (DOD), and often from state veterans affairs offices include access to vocational rehabilitation services and funding, and, for certain veterans, access to health care from the VA (including for all combat veterans for five years post-discharge, in addition to those who have service-connected disabilities). DOD's Computer/Electronic Accommodations Program (CAP) provides information resources to military members, veterans, and federal employers, and, for wounded service members, assistive technology that they may retain when they separate from military service.

Providing carrots, in addition to sticks, to employers related to hiring, retaining, advancing, and accommodating veterans allows attorneys to provide solutions to employers while simultaneously having employment law protections available. These laws provide resources, leverage, requirements, and enforcement mechanisms including referral to ombudspersons, access to courts, funding, technology, and more to promote employment and reemployment for veterans with disabilities, wounded warriors, and those with continuing obligations including to the National Guard and military reserves. ■

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