

Understanding Your Employment Rights Under the Americans with Disabilities Act (ADA): A Guide for Veterans

INTRODUCTION

In recent years, the percentage of veterans who report having service-connected disabilities (i.e., disabilities that were incurred in, or aggravated during, military service)¹ has risen. About twenty-five percent of recent veterans report having a service-connected disability, as compared to about thirteen percent of all veterans.² Common injuries experienced by veterans include missing limbs, spinal cord injuries, burns, post traumatic stress disorder (PTSD), hearing loss, traumatic brain injuries, and other impairments.

This guide is intended to answer questions you may have about your rights as an injured veteran, now that you have left the service and are returning to a civilian job or seeking a new job. It also explains the kinds of adjustments (called reasonable accommodations) that may help you be successful in the workplace.

1. Are there any laws that protect veterans with disabilities in employment?

Yes. There are several federal laws that provide important protections for veterans with disabilities who are looking for jobs or are already in the workplace. Two of those laws -- the **Uniformed Services Employment and Reemployment Rights Act (USERRA)** and Title I of the **Americans with Disabilities Act (ADA)** -- protect veterans from employment discrimination. See Qs&As 6 and 7 for a discussion of laws providing veterans' preference and special hiring for veterans.

USERRA has requirements for reemploying veterans with and without service-connected disabilities and is enforced by the U.S. Department of Labor (DOL) and the Department of Justice (DOJ). Title I of the ADA, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), prohibits private and state and local government employers with 15 or more employees from discriminating against individuals on the basis of disability.³

2. What does USERRA do?

USERRA prohibits employers from discriminating against employees or applicants for employment on the basis of their military status or military obligations. It also protects

the reemployment rights of individuals who leave their civilian jobs (whether voluntarily or involuntarily) to serve in the uniformed services, including the U.S. Reserve forces and state, District of Columbia, and territory (e.g., Guam) National Guards.

Under USERRA, employers must make “reasonable efforts” to help a veteran who is returning to employment to become qualified to perform the duties of the position he or she would have held but for military service whether or not the veteran has a service-connected disability. If the veteran has a disability incurred in, or aggravated during, his or her service, the employer must make reasonable efforts to accommodate the disability and return the veteran to the position in which he or she would have been employed if the veteran had not performed military service. If the veteran is not qualified for that position due to the disability, USERRA requires the employer to make reasonable efforts to help qualify the veteran for a job of equivalent seniority, status, and pay, the duties of which the person is qualified to perform or could become qualified to perform. This could include providing training or retraining for the position at no cost to the veteran. See Title 38, United States Code, Chapter 43 – Employment and Reemployment Rights of Members of the Uniformed Services, 38 U.S.C. § 4313; 20 C.F.R. §§ 1002.198, 1002.225 -.226. USERRA applies to all veterans, not just those with service-connected disabilities, and to all employers regardless of size. For more information on the reemployment rights of uniformed service personnel, see DOL’s website at www.dol.gov/vets.

3. What protections does the ADA provide?

Title I of the ADA prohibits an employer from treating an applicant or employee unfavorably in all aspects of employment -- including hiring, promotions, job assignments, training, termination, and any other terms, conditions, 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. The ADA also limits the medical information employers may obtain and prohibits disability-based harassment and retaliation.

Finally, the ADA provides that, absent undue hardship (significant difficulty or expense to the employer), 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. Documents explaining Title I of the ADA and the Rehabilitation Act can be found on EEOC’s website at www.eeoc.gov.

4. I was injured during active duty but don't think of myself as "disabled." How do I know if I am protected by the ADA?

You are protected if you meet the ADA's definition of disability and are qualified for the job you want or hold. The ADA defines an **"individual with a disability"** as a person who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment (i.e. was substantially limited in the past, such as prior to undergoing rehabilitation); or (3) is regarded, or treated by an employer, as having such an impairment, even if no substantial limitation exists. You are considered qualified if you are able to meet an employer's requirements for the job, such as education, training, employment experience, skills, or licenses, and are able to perform the job's essential or fundamental duties with or without reasonable accommodation.

As a result of changes to the ADA made by the ADA Amendments Act of 2008, it is now much easier for individuals with a wide range of impairments to establish that they are individuals with disabilities and entitled to the ADA's protections. For example, the term "major life activities" includes not only activities such as walking, seeing, hearing, and concentrating, but also the operation of major bodily functions, such as functions of the brain and the neurological system.⁴

Additionally, an impairment need not prevent or severely or significantly restrict your performance of a major life activity to be considered substantially limiting; the determination of whether an impairment substantially limits a major life activity must be made without regard to any mitigating measures (e.g., medications or assistive devices, such as prosthetic limbs) that you may use to lessen your impairment's effects; and impairments that are episodic or in remission (e.g., epilepsy or PTSD) are considered disabilities if they would be substantially limiting when active.⁵ Some service-connected disabilities, such as deafness, blindness, partially or completely missing limbs, mobility impairments requiring the use of a wheelchair, major depressive disorder, and PTSD, will easily be concluded to be disabilities under the ADA.⁶

5. If I have a military disability rating or a disability rating from the VA, does that mean I am also covered by the ADA?

Yes, you are probably covered. Although the ADA uses different standards than the U.S. Department of Defense and the U.S. Department of Veterans Affairs (VA) in determining disability, many more service-connected disabilities will also be considered disabilities under the ADA than prior to the ADA Amendments Act. See Q&A 4.

6. Under the ADA, is a private employer required to hire me over other applicants because I have a disability?

Though it is not **required** to do so, a private employer **may decide to give** a veteran with a disability a preference in hiring. The ADA prohibits discrimination “on the basis of disability.” This means that if you are qualified for a job, an employer cannot refuse to hire you because you have a disability or because you may need a reasonable accommodation to perform the job. Even if you are qualified for a job, an employer may choose another applicant without a disability because that individual is better qualified.

Some laws, however, require private employers to give a preference to veterans with disabilities. For example, 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 the appropriate employment service and to give covered veterans priority in referral to such openings.⁷

7. Are there any laws that will give me special consideration if I am looking for a job 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 eligible applicants and may be considered for special noncompetitive appointments for which they are eligible.⁸

Federal agencies also may use specific rules and regulations, called “special hiring authorities,” to hire individuals with disabilities outside the normal competitive hiring process, and sometimes may even be required to give preferential treatment to veterans, including disabled veterans, in making hiring decisions.

Here are some of the special hiring authorities that may apply to you if you are looking for a job with the federal government:

- The **Veterans’ Recruitment Appointment (VRA)** program allows agencies to appoint eligible veterans without competition.
- The **Veterans Employment Opportunity Act (VEOA)** can be used when filling permanent, competitive service positions. It allows veterans to apply for jobs that are only open to “status” candidates, which means “current competitive service employees.”
- The **Schedule A Appointing Authority**, though not specifically for veterans, allows agencies to appoint eligible applicants who have a severe physical, psychological, or intellectual disability.

For more information on veterans' preferences and special hiring authorities, see the "Vet Guide" on the U.S. Office of Personnel Management (OPM) website at www.opm.gov/staffingportal/vetguide.asp#intro, "Feds Hire Vets - Veterans' Preference" at www.fedshirevets.gov/job/vetpref/index.aspx, and Special Hiring Authorities for Veterans at www.fedshirevets.gov/job/shav/index; see also OPM's Disabled Veterans Affirmative Action Program at www.opm.gov/veterans/dvaap.asp.

8. During a job interview, may an employer ask about my amputation, why I am in a wheelchair, or how I sustained any other injury I may have?

No. Even if your disability is obvious, an employer cannot ask questions about when, where, or how you were injured. However, where it seems likely that you will need a reasonable accommodation to do the job, an employer may ask you if an accommodation is needed and, if so, what type. In addition, an employer may ask you to describe or demonstrate how you would perform the job with or without an accommodation. For example, if the job requires that you lift objects weighing up to 50 pounds, the employer can ask whether you will need assistance or ask you to demonstrate how you will perform this task. Similarly, if you voluntarily reveal that you have an injury or illness and an employer reasonably believes that you will need an accommodation, it may ask what accommodation you need to do the job.

9. Do I have to disclose an injury or illness that is not obvious during an interview or indicate on a job application that I have a disability?

No. The ADA does not require you to disclose that you have any medical condition on a job application or during an interview. However, if you will need a reasonable accommodation to participate in the application process, such as more time to take a test or permission to provide oral instead of written responses, you must request it. Additionally, some veterans with service-connected disabilities may choose to disclose that they have medical conditions, such as PTSD or a traumatic brain injury, because of symptoms they experience or because they will need a reasonable accommodation at work. Once an employer makes a job offer, it may ask you questions about your medical conditions, and perhaps even require you to take a medical examination, as long as it requires everyone else in the same job to answer the same questions and/or take the same medical examination before starting work.

10. Some applications ask me to indicate whether I am a "disabled veteran." Is this legal?

Yes, if the information is being requested for **affirmative action purposes**. See EEOC Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations Under the Americans with Disabilities Act of 1990 (1995) at www.eeoc.gov/policy/docs/preemp.html. An employer may ask applicants to voluntarily

self-identify as individuals with disabilities or “disabled veterans” when the employer is: (1) 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 (2) voluntarily using the information to benefit individuals with disabilities, including veterans with service-connected disabilities.

If an employer invites you to voluntarily self-identify as a disabled veteran, it must clearly inform you in writing (or orally, if no written questionnaire is used) that: (1) the information is being requested as part of the employer’s affirmative action program; (2) providing the information is voluntary; (3) failure to provide it will not subject you to any adverse treatment; and (4) the information will be kept confidential and only used in a way that complies with the ADA.

11. What types of reasonable accommodations may I want to request for the application process or on the job?

The following are examples of types of accommodations that you may need for the application process or while on the job:

- written materials in accessible formats, such as large print, Braille, or on computer disk
- extra time to complete a test if you have difficulty concentrating or have a learning disability or traumatic brain injury (TBI)
- interviews, tests, and training held in accessible locations
- modified equipment or devices (e.g., assistive technology that would allow you to use a computer if you are blind or to use a telephone if you are deaf or hard of hearing; a glare guard for a computer monitor if you have a TBI; a one-handed keyboard if you are missing an arm or hand)
- physical modifications to the workplace (e.g., reconfiguring a workspace, including adjusting the height of a desk or shelves if you use a wheelchair)
- permission to work from home
- leave for treatment, recuperation, or training related to your disability
- a modified or part-time work schedule
- a job coach who could assist you if you initially have some difficulty learning or remembering job tasks

- modification of supervisory methods, such as having a supervisor break complex assignments into smaller, separate tasks, provide some additional feedback or guidance on a task, or adjust methods of communication (e.g., give written rather than oral instructions for completing certain tasks)
- reassignment to a vacant position if your disability prevents you from performing the duties of your current position or where any reasonable accommodation in your current position would result in undue hardship (i.e., significant difficulty or expense)

12. How do I ask for a reasonable accommodation?

You simply have to indicate -- orally or in writing -- that you need an **adjustment or change** in the application process or at work for a reason related to a medical condition. For example, if you have a vision loss and cannot read standard print, you would need to inform the employer that you need the application materials in some other format (e.g., large print or on computer disk) or read to you. You do not have to mention the ADA or use the term "reasonable accommodation." Someone acting on your behalf, such as a family member, rehabilitation counselor, health professional, or other representative, also can make the request.

13. What happens after I request a reasonable accommodation?

A request for reasonable accommodation is the first step in an **informal interactive process** between you and the employer.

The process will involve determining whether you have a disability as defined by the ADA (where this is not obvious or already known) and identifying accommodation solutions. An employer also may ask if you know what accommodation you need that will help you apply for or do the job. There are extensive public and private resources to help identify reasonable accommodations for applicants and employees with particular disabilities. For example, the website for the Job Accommodation Network (JAN) provides a practical guide for individuals with disabilities on requesting and discussing reasonable accommodations and on finding the right job. See JAN's website at www.askjan.org.

14. I am not sure whether I will need a reasonable accommodation. If I don't ask for one before I start working, can I still ask for one later?

Yes. You can request an accommodation at any time during the application process or when you start working even if you did not ask for one when applying for a job or after receiving a job offer. If you are already receiving a reasonable accommodation, you may also request a different or additional accommodation later if your disability and/or the job changes, or if another accommodation becomes available that will help you.

Generally, you should request an accommodation when you know that there is a workplace barrier that is preventing you from competing for or performing a job or having equal access to the benefits of employment. As a practical matter, it is better to request a reasonable accommodation before your job performance suffers.

15. What can I do if I feel that an employer has violated the ADA by not hiring me or providing a reasonable accommodation?

If you believe that your employment rights have been violated on the basis of disability (or for some other discriminatory reason), there are actions you can take:

- **Claims against a private or a state or local government employer:** To take formal action, you must file a charge of discrimination with the EEOC. The charge must be filed by mail or in person with the local EEOC office within 180 days from the date of the alleged violation. The 180-day filing deadline is extended to 300 days if a state or local anti-discrimination law also covers the charge.

The EEOC will send you and the employer a copy of the charge and may ask for responses and supporting information. Before a formal investigation, the EEOC may select the charge for EEOC's mediation program. Mediation is free, confidential, and voluntary for both parties. A charge will only be mediated if both parties agree to participate in the process. Mediation may prevent a time-consuming investigation of the charge.

If a charge goes to mediation but is unsuccessful or is not selected for mediation, the EEOC investigates the charge to determine if there is "reasonable cause" to believe discrimination has occurred. If reasonable cause is found, the EEOC will then try to resolve the charge with the employer. In some cases, where the charge cannot be resolved, the EEOC will file a court action. If the EEOC finds no discrimination, or if an attempt to resolve the charge fails and the EEOC decides not to file suit, it will issue you a notice of a "right to sue," which will give you 90 days to file a court action. You also can request a notice of a "right to sue" from the EEOC 180 days after the charge first was filed with the EEOC and may then bring suit within 90 days after receiving the notice.

For a detailed description of the process, visit our website at www.eeoc.gov/charge/overview_charge_filing.html.

- **Claims against a federal government agency:** If you are a federal employee or applicant and you believe that a federal agency has discriminated against you, you have a right to file a complaint. Each agency is required to post information about how to contact the agency's EEO Office. You can contact an EEO Counselor by calling the office responsible for the agency's EEO complaints program.

The first step is to contact an EEO Counselor at the agency where you work or where you applied for a job. Generally, you must contact the EEO

Counselor within 45 days from the day the discrimination occurred. In most cases the EEO Counselor will give you the choice of participating either in EEO counseling or in an alternative dispute resolution (ADR) program, such as a mediation program.

If you do not settle the dispute during counseling or through ADR, you can file a formal discrimination complaint against the agency with the agency's EEO Office. You must file within 15 days from the day you receive notice from your EEO Counselor about how to file. Once you have filed a formal complaint, the agency will review the complaint and, if the complaint is not dismissed for procedural reasons (e.g., because it was filed too late), the agency will conduct an investigation. The agency has 180 days from the day you filed your complaint to finish the investigation. When the investigation is finished, the agency will issue a notice giving you two choices: either request a hearing before an EEOC Administrative Judge or ask the agency to issue a decision as to whether the discrimination occurred.

For a detailed description of the federal complaint process, visit our website at www.eeoc.gov/federal/fed_employees/complaint_overview.cfm

¹ See Title 38, United States Code § 101.

² See Bureau of Labor Statistics, Employment of Veterans Summary (March 11, 2011) available at <http://www.bls.gov/news.release/vet.nr0.htm>.

³ The EEOC also is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee (including a veteran) because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), or genetic information.

⁴ 29 C.F.R. § 1630.2(j)(1)(i)-(ii).

⁵ 29 C.F.R. § 1630.2(j)(1)(ii)-(vii).

⁶ 29 C.F.R. § 1630.2(j)(3)(iii).

⁷ These provisions of VEVRAA are enforced by the Office of Federal Contract Compliance Programs (OFCCP) within the U.S. Department of Labor (DOL). See www.dol.gov/compliance/laws/comp-vevraa.htm

⁸ Some states also grant veterans' preference for state government jobs. To find out if your state has a veterans' preference program, contact your state's labor office.

RESOURCES

Laws Protecting Veterans with Service-Connected Disabilities

ADA

U.S. Equal Employment Opportunity Commission (EEOC)

www.eeoc.gov

1-800-669-4000

1-800-669-6820 (TTY)

U.S. Department of Justice (DOJ)

www.ada.gov

1-800-514-0301

1-800-514-0383 (TTY)

USERRA

U.S. Department of Labor (DOL)

www.dol.gov/vets

1-866-4-USA-DOL

1-877-889-5627 (TTY)

VEVRAA

DOL, Office of Federal Contract Compliance Programs (OFCCP)

<http://www.dol.gov/ofccp/regs/statutes/4212.htm>

1-800-397-6251

1-877-889-5627 (TTY)

Recruiting and Hiring

National Resource Directory (NRD)

A partnership among the Department of Defense (DoD), Department of Veterans Affairs (VA), and DOL

www.nationalresourcedirectory.gov

1-800-342-9647

DOL One Stop Career Centers

www.careeronestop.org

1-877-348-0502

1-877-348-0501 (TTY)

Employer Assistance and Recruiting Network (EARN)

www.AskEARN.org

1-855-Ask-EARN (1-855-275-3276)

Occupational Information Network (O*NET) Online

Provides comprehensive occupational descriptions and data for use by job seekers, employers, and others

www.onetcenter.org/

U.S. Department of Veterans Affairs

www.va.gov

1-800-827-1000

U.S. Office of Personnel Management

www.fedshirevets.gov/

1-202-606-5090

Reasonable Accommodation

EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA

www.eeoc.gov/policy/docs/accommodation.html

Job Accommodation Network (JAN)

www.askjan.org

1-800-526-7234

1-877-781-9403 (TTY)

DoD Computer/Electronic Accommodations Program (CAP)

www.tricare.mil/cap

1-703-681-8813

1-703-681-3978 (TTY)