

Wounded Warriors Returning to Work

What Employers Need To Know
About Their Responsibilities Under
the Americans with Disabilities Act

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Objective

Today's presentation will focus on what human resource professionals need to know about the **ADA** as it applies to veterans, with a particular focus on **medical examinations and inquiries, reasonable accommodation, qualification standards, and cultural considerations when working with veterans.**

Recent Veterans and Employment

- The unemployment rate for “Gulf War II” veterans fell in 2012 by 2.2 percentage points to 9.9 percent.
- Gulf War II vets of the “regular” forces had a 13.7% unemployment rate.
- Veterans of the Reserve and National Guard components had a lower unemployment rate at 7.2%.

Recent Veterans and Employment

- Male Gulf War II vets between 18 and 24 years have a 20% unemployment rate, compared to 16% for non-veterans.
- 28% of Gulf War II veterans report having a service-connected disability – a rate twice as high as that for veterans overall.
- Veterans with disabilities are employed at similar rates as veterans without disabilities

Common Service-Connected Disabilities

- Gulf War II “signature injuries” – Traumatic Brain Injury (TBI) and Post Traumatic Stress (PTSD).
- Hearing loss, tinnitus
- Major Depression
- Spinal injuries and paralysis
- Burns
- Amputations

Post Traumatic Stress Disorder (PTSD)

- PTSD is an anxiety disorder that can develop in response to an extreme traumatic event. Common symptoms may include flashbacks, intrusive recollections, nightmares, detachment, and difficulty concentrating.
- About 8% of the general population, about 20% of Gulf War II era veterans, and about 30% of Vietnam veterans are estimated to have PTSD

Traumatic Brain Injury (TBI)

- Traumatic Brain Injury is a blow or jolt to the head, or a penetrating head injury that disrupts the function of the brain.
- TBI can result in short or long term cognitive issues, irritability, sensitivity to light, headaches, memory problems, anxiety, fatigue, or difficulty concentrating.

The ADA

- The ADA is a **federal law** that prohibits discrimination and guarantees people with disabilities (physical and mental impairments) the **same opportunities** as everyone else.
- The US Equal Employment Opportunity Commission (**EEOC**) is the federal agency that enforces the employment provisions of the ADA.

ADA Coverage

The ADA covers an individual who:

- Has a **physical or mental impairment** that substantially limits one or more major life activity;
- Has a **record** of such an impairment; or,
- Is **regarded**, or treated by an employer, as having such an impairment;

AND

- Is **qualified** for the job—meets the requirements of the position and can do the job with or without a reasonable accommodation.

Impairments That May Be Disabilities

- Any **physiological disorder or condition, cosmetic disfigurement, or anatomical loss** affecting one or more body systems;
- Any **mental or psychological disorder**, such as an intellectual disability, emotional or mental illness, or specific learning disabilities

Common Combat Related Impairments That Are Virtually Always Disabilities

- Blindness
- Deafness
- Epilepsy
- Post-traumatic stress disorder
- Major depressive disorder
- Obsessive compulsive disorder
- Certain intellectual disabilities
- Partially/completely missing limbs and mobility impairments requiring the use of a wheelchair

The ADA and Employment

- The ADA **prohibits an employer from discriminating in any aspect of employment** because a person has a disability, a history of a disability, or because the employer believes the person has a disability;
- The ADA **limits the medical information** an employer can obtain from applicants and employees;
- Absent undue hardship, the ADA requires employers to make **“reasonable accommodations”** to allow qualified applicants and employees with disabilities to apply for or successfully perform a job.

The ADA and Employment

The ADA also:

- **prohibits retaliation** against an employee for exercising rights under the ADA
- Prohibits discrimination based on association with a person with a disability

What are some of the special concerns for veterans under the ADA?

- “ADA literacy”
- Medical exams and inquiries
- Qualification standards
- Reasonable accommodation

Veterans and “ADA Literacy”

- Concept of disability discrimination does not exist in the military context;
- Military has comparatively few restrictions on medical examinations and inquiries;
- Physical and medical qualification standards are more rigid in the military context;
- Veterans may be disinclined to admit that they have a disability, or to ask for reasonable accommodation.

EEOC and Veterans with Disabilities

Educating veterans about the ADA has been an important part of EEOC's outreach in recent years.

As of June 30th, the EEOC has conducted 144 outreach events focused on veterans, educating a total of 15,751 people in Fiscal Year 2013.

Limitations on Medical Examinations and Inquiries

The ADA limits when an employer may ask disability-related questions of an employee or applicant.

Veterans may be unfamiliar with these restrictions and less apt to challenge requests for medical information.

Medical Exams and Inquiries – Pre-Offer

- Prior to an offer, **the ADA prohibits any disability-related inquiries and medical examinations**, even if they are related to the job.
- An employer **may** ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.
- An employer **may** ask applicants to voluntarily self-identify as a person with a disability for affirmative action purposes.

Medical Exams and Inquiries – Post-Offer

After a job offer has been made, an employer may **condition the job offer** on the applicant answering certain medical questions or passing a medical exam, **but only if all new employees in the same type of job** have to answer the questions or take the exam.

Medical Exams and Inquiries – During Employment

Once a person has started work, an employer generally can only ask medical questions or require a medical exam when it is job related and consistent with business necessity:

- to support an employee's **request for an accommodation**, or
- if the **employer reasonably believes the employee cannot safely perform the job** because of a medical condition.

Confidentiality of Medical Information

The law requires that employers keep all medical records and information **confidential** and in **separate medical files**.

Exception: medical information **may** be shared with supervisors (regarding restrictions and/or accommodations), first aid and safety personnel, and government officials conducting an investigation under ADA.

Reasonable Accommodation

An employer **must** provide a reasonable accommodation to a **qualified** employee or job applicant with a disability, **unless** doing so would **cause significant difficulty or expense** for the employer.

Reasonable Accommodation

A reasonable accommodation:

- is any change in the work environment (or in the way things are usually done), or
- helps a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Requesting a Reasonable Accommodation

- The person needs to indicate—orally or in writing—a need for an **adjustment or change** in the application process or at work for a reason related to a medical condition.
- No need to mention the ADA or use the term “reasonable accommodation.” “No magic words.”
- The request also can be made by someone acting on the veteran’s behalf, like a family member, rehabilitation counselor, or health professional.

“The Interactive Process”

A request for a reasonable accommodation triggers the “interactive process,” in which the employer and employee work together to find a solution to the barrier posed by the disability.

Common Accommodations

- Written materials in accessible formats, such as large print, Braille, or on computer disk
- Extra time to complete a test for concentration difficulties or a learning disability
- Interviews, tests, and training in accessible locations
- Modified equipment or devices

Common Accommodations

- Physical modifications to the workplace
- 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
- Modification of supervisory methods
- Reassignment (only for those who have been successfully performing in the position)

Common Accommodations for PTSD and TBI

- Leave/time off for medical appointments
- Flexible schedule, allowing longer or more frequent work breaks
- Additional time to learn new responsibilities
- Job sharing
- Using daily or weekly “to-do” or tasks lists
- Dividing large assignments into smaller goal-oriented tasks or steps

Common Accommodations for PTSD and TBI, Continued

- Allowing telephone calls during work hours to doctors and others for needed support
- Telework
- Leave for counseling and medical appointments
- See www.americasheroesatwork.gov for more common TBI/PTSD accommodations

Qualifications Standards

The ADA prohibits employers from using qualification standards and tests that screen out people with disabilities, unless they are **job related for the position in question, and consistent with business necessity.**

Qualification standards should measure the ability to do the essential functions of a job.

Qualification Standards and Reasonable Accommodation

Exclusion of a qualified person with a disability under a valid qualification standard is only allowable if no reasonable accommodation would facilitate performance of the essential function.

Safety Related Qualification Standards

Exclusion of a person with a disability based on a safety-based qualification standard can only be justified if the employer shows that the applicant or employee would post a **direct threat** to himself or others.

Individualized assessment required to show “**significant risk of substantial harm,**” that **cannot be eliminated or reduced by reasonable accommodation.**

Qualification Standards and Reasonable Accommodation: Thinking Outside the Box

Although the ADA does not apply to uniformed personnel in the military, the Armed Forces are leading our country in “thinking outside the box” with regard to continued service my military members with significant injuries.

SFC Dana Bowman, U.S. Army

Dana Bowman was a member of the U.S. Army Golden Knights Parachute Team. Became a double amputee as a result of a parachuting accident. Nine months after his accident he became the first double amputee to re-enlist in the Army. He continued performing with the Golden Knights, and retired as a Sergeant First Class in 1996.

Captain D.J. Skelton, U.S. Army

DJ Skelton was an infantry lieutenant stationed in Afghanistan when his patrol was ambushed. He suffered injuries including the loss of one eye, destruction of the roof of his mouth, partial loss of use of his left arm, and significant damage to one of his legs. Faced with medical discharge, Skelton convinced the Army that he still had much to contribute. He was reclassified into military intelligence, commanded a company, and went on to become a Foreign Area Officer specializing in Chinese American relations.

SGT Chris Burrell, U.S. Army

SGT Chris Burrell lost his left leg when his vehicle hit an explosive device on a patrol in Baghdad in 2007. Eager to return to his job as a canine handler with the military police, Burrell successfully petitioned to remain on active duty and was assigned to the 108th Military Police Company.

What do the stories of these soldiers
retained in the military have to do with
my work as a
civilian human resource or
EEO professional?

If we focus on abilities and not disabilities, if we focus on what we have, not on what we don't have, if the Army focuses on these Soldiers' abilities, and **not artificially or unnecessarily puts limitations on them**, I think the Army will greatly benefit from their skills, and knowledge, and their passion to serve their other Soldiers.

General Frederick Franks, US Army (Ret.)

For More Information:

www.eeoc.gov

www.askjan.org

www.usdoj.gov

<http://www.americasheroesatwork.gov/>

Get EEOC's ADA Guides for Veterans and
Employers at www.eeoc.gov