

# VETERANS WITH SERVICE-CONNECTED DISABILITIES IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT (ADA)

## Introduction

According to government statistics, between October 2001 and February, 2008, more than 30,000 veterans serving in Iraq, Afghanistan, and surrounding duty stations have been wounded in action. <sup>1</sup> Many of them have lost a hand or limb or been severely burned or blinded. Others have been diagnosed with hearing loss, post traumatic stress disorder (PTSD), traumatic brain injuries (TBIs), and other service-connected disabilities. <sup>2</sup> Despite their injuries, many veterans who leave active duty are able to work.

This guide answers questions that veterans with service-connected disabilities may have about the protections they are entitled to when they seek to return to their former jobs or look to find their first, or new, civilian jobs. It also explains changes or adjustments that veterans may need, because of their injuries, to apply for, or perform, a job, or to enjoy equal access to the workplace. Finally, this guide includes resources on where veterans can find more information about the employment rights of individuals with disabilities.

### ***1. Are there any laws that protect veterans with service-connected disabilities?***

Yes. At least two federal laws provide important protections for veterans with disabilities. **The Uniformed Services Employment and Reemployment Rights Act (USERRA) has requirements for reemploying veterans with and without service-connected disabilities. The U.S. Department of Labor (DOL) enforces USERRA.** In addition, Title I of the **Americans with Disabilities Act (ADA)** prohibits private and state and local government employers with 15 or more employees from discriminating against individuals on the basis of disability. Title I of the ADA also generally requires covered employers to make reasonable accommodations – changes in the workplace or in the way things are usually done that provide individuals with disabilities equal employment opportunities. The U.S. Equal Employment Opportunity Commission (EEOC) enforces Title I of the ADA. Finally, 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.

### ***2. How does USERRA differ from the ADA?***

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 those 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.

Both USERRA and the ADA include reasonable accommodation obligations; however, USERRA requires employers to go further than the ADA by making reasonable efforts to assist a veteran who is returning to employment **in becoming qualified for a job**. The employer must help the veteran become qualified to perform the duties of the position whether or not the veteran has a service-connected disability requiring reasonable accommodation. This could include providing training or retraining for the position. See 38 U.S. Code § 4313; 20 C.F.R. §§ 1002.198, 1002.225 -.226. Additionally, reasonable accommodations may be available under USERRA for individuals whose service-connected disabilities may not necessarily meet the ADA's definition of "disability." USERRA also applies to all employers, regardless of size. Information on the reemployment rights of uniformed service personnel can be found on DOL's website at [www.dol.gov/vets](http://www.dol.gov/vets).

Title I of the ADA prohibits employers from discriminating against qualified individuals with disabilities with respect to hiring, promotion, termination, and other terms, conditions, and privileges of employment. The ADA also prohibits disability-based harassment and 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). Under the ADA, an individual may ask for a reasonable accommodation at any time during the application process or during employment. It is best to request a reasonable accommodation as soon as possible after recognizing that one is needed. Additionally, an employer may have to provide someone who has been given one type of reasonable accommodation with a different or additional one (e.g., if the nature of the disability or the job changes, or if another type of accommodation becomes available). Documents explaining Title I of the ADA can be found on EEOC's website at [www.eeoc.gov](http://www.eeoc.gov).

***3. I was severely 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. 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 (e.g., hearing, seeing, speaking, sitting, standing, walking, concentrating, or performing manual tasks); (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 a substantially limiting impairment, even if no substantial limitation exists.

The ADA covers more than just individuals who were born with disabilities. It also covers individuals who use wheelchairs, were blinded, or became deaf because of an accident or injury and individuals who are diagnosed with medical conditions such as traumatic brain injury, major depression, and PTSD at any point in their lives.

The ADA does not require that someone be completely unable to work or perform other major life activities. In fact, the law recognizes that many people with physical or mental impairments are capable of working and protects them from discrimination that results from employer misperceptions or from the failure to make what are often simple workplace modifications.

***4. I have been found to have a service-connected disability for purposes of receiving benefits related to my military service. Does this mean I am covered by the ADA?***

It depends. The definition of "disability" under the ADA may differ from the definition used in other laws. For example, you may be considered a "disabled veteran" if you served on active duty in the armed forces, were honorably discharged, and have a service-connected disability, or are receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or a military department. See 5 U.S.C.A. § 2108. It is possible that you may be a "disabled veteran" but not covered under the ADA. For example, if you receive benefits based on a 10% disability rating for service-connected tinnitus (which causes ringing in the ear), but are not substantially limited in hearing or some other major life activity, do not have a record of a substantial limitation, and are not treated by an employer as if you are substantially limited, then you do not have a disability under the ADA. However, it is certainly possible that you will meet both the definition of "disabled veteran" and the ADA's definition of "individual with a disability." For example, if you have a complete loss of vision due to a combat-related injury, you are a "disabled veteran" entitled to military benefits and also an individual with a disability under the ADA.

***5. Is an employer required to hire me over other applicants because I have a service-connected disability?***

In most cases, no. The ADA prohibits discrimination "against a qualified individual with a disability because of the disability of such individual." 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. You are considered qualified under the ADA if you are able to meet the 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. Even if you are qualified for a job, however, an employer may choose another applicant without a disability because that individual is better qualified.

Though it is not **required** to do so, an employer may **decide** to give a veteran with a service-connected disability a preference in hiring. In fact, federal agencies 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, promotion, or other employment decisions. See the U.S. Office of Personnel Management's question-and-answer guide on "Excepted Service—Appointment of Persons with Disabilities and Career and Career-Conditional Appointments" at [www.opm.gov/disability/appointment\\_disabilities.asp](http://www.opm.gov/disability/appointment_disabilities.asp) and OPM's "Vet Guide" at [www.opm.gov/veterans/html/vetguide.asp](http://www.opm.gov/veterans/html/vetguide.asp); see also OPM's Disabled Veterans Affirmative Action Program at [www.opm.gov/veterans/dvaap.asp](http://www.opm.gov/veterans/dvaap.asp).

***6. During a job interview, may an employer ask about my missing arm, 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.

**7. 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, unless 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. Some veterans with service-connected disabilities, however, may choose to disclose that they have medical conditions, such as PTSD or a TBI, 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.

**8. 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](http://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.

**9. 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 may be needed 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 for a person who has difficulty concentrating or has a learning disability or traumatic brain injury

recruitment fairs, interviews, tests, and training held in accessible locations

modified equipment or devices (e.g., assistive technology that would allow a blind person to use a computer or someone who is deaf or hard of hearing to use a telephone; a glare guard for a computer monitor used by a person with a TSI; a one-handed keyboard for a person missing an arm or hand)

physical modifications to the workplace (e.g., reconfiguring a workspace, including adjusting the height of a desk or shelves for a person in a wheelchair)

permission to work from home

leave for treatment, recuperation, or training related to the disability

modified or part-time work schedules

a job coach who could assist an employee who initially has some difficulty learning or remembering job tasks

reassignment to a vacant position where a disability prevents performance of an employee's current position or where any reasonable accommodation in the current position would result in undue hardship (i.e., significant difficulty or expense)

#### ***10. 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." The request also can be made by someone acting on your behalf, such as a family member, rehabilitation counselor, health professional, or other representative.

#### ***11. 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.jan.wvu.edu/portals/individuals.htm](http://www.jan.wvu.edu/portals/individuals.htm).

#### ***12. 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. 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.

#### ***13. Where can I find more information on USERRA and the ADA?***

This guide includes resources on where to find information on your employment rights under both laws and provides a list of public and private organizations that can assist

veterans with service-connected disabilities who are seeking employment. It also includes resources on reasonable accommodation.

## RESOURCES

### Laws Protecting Veterans with Service-Connected Disabilities

#### **ADA**

#### **Equal Employment Opportunity Commission (EEOC)**

[www.eeoc.gov/ada/adadocs.html](http://www.eeoc.gov/ada/adadocs.html)

EEOC's website provides enforcement guidances and other policy documents on the ADA, as well as information on how to file a charge of discrimination under any of the statutes EEOC enforces.

#### **USERRA**

#### **The Department of Labor (DOL)**

[www.dol.gov/vets](http://www.dol.gov/vets)

DOL, through the Veterans' Employment and Training Service, provides information on USERRA, including a resource guide and fact sheet.

#### **Employer Support of the Guard and Reserve (ESGR)**

[www.esgr.net](http://www.esgr.net)

ESGR is a unit in the Department of the Defense, established to promote cooperation and understanding between Reserve component members and their civilian employers. ESGR has more than 900 volunteers who help employers and employees understand what USERRA requires.

### Locating and Securing Employment

#### **President's National Hire Veterans Committee – Hire Vets First**

[www.hirevetsfirst.gov](http://www.hirevetsfirst.gov)

This comprehensive career website is designed to help employers find qualified veterans, as well as help veterans to make the most of a national network of employment resources.

#### **One Stop Career Centers**

[www.hirevetsfirst.gov/onestop\\_emp.asp](http://www.hirevetsfirst.gov/onestop_emp.asp); Careeronestop, [www.servicelocator.org](http://www.servicelocator.org)

The One Stop Career Centers serve the needs of those looking for jobs and employers seeking employees. They assist businesses with recruitment, training, and retention of skilled workers. There are nearly 2,000 One Stop Career Centers nationwide.

#### **Vocational Rehabilitation**

[www.vba.va.gov/bln/vre](http://www.vba.va.gov/bln/vre)

[www.vetsuccess.gov/cominghome](http://www.vetsuccess.gov/cominghome)

The U.S. Department of Veterans Affairs, through its regional offices, supports nationwide employment training programs for veterans with service-related injuries.

#### **State Veteran Employment Services**

[www.dol.gov/vets/aboutvets/contacts/main.htm](http://www.dol.gov/vets/aboutvets/contacts/main.htm)

The U.S. Department of Labor (DOL), through its Veterans Employment Training Service (VETS), helps support a network of local employment service representatives dedicated to assisting veterans with service-related injuries in locating and securing employment.

#### **Veteran Service Organizations (VSOs)**

[www1.va.gov/vso/](http://www1.va.gov/vso/)

Many of the national VSOs, such as Disabled American Veterans, AMVETS, Paralyzed Veterans Association, and Blinded Veterans Association, offer employment-related services to veterans with service-related injuries in various localities.

## **Reasonable Accommodation**

#### **EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA (2002)**

[www.eeoc.gov/policy/docs/accommodation.html](http://www.eeoc.gov/policy/docs/accommodation.html)

This extensive guidance clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship and provides practical examples of the types of accommodations that may be needed to enable a person with a disability to be considered for a position, perform the essential functions of a job, or enjoy the equal benefits and privileges of employment.

#### **Job Accommodation Network (JAN)**

[www.jan.wvu.edu](http://www.jan.wvu.edu)

JAN provides a variety of resources for employers and individuals with disabilities. JAN also provides lists of possible accommodations based on specific disabilities as well as links to various other accommodation providers.

#### **Department of Defense Computer/Electronic Accommodations Program (CAP)**

[www.tricare.mil/cap](http://www.tricare.mil/cap)

CAP provides assistive technology and services to individuals with disabilities, federal managers, supervisors, and IT professionals.

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#### **Footnotes**

<sup>1</sup> See U.S. Department of Defense (DoD) Personnel and Procurement Statistics at <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/castop.htm>.

<sup>2</sup> The term “service-connected” means, with respect to disability or death, that the disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in the line of duty in the active military, naval, or air service. See 38 U.S.

Code § 101. In this document, the terms “veteran with a service-connected disability” and “disabled veteran” are intended to have the same meaning. The terms “disability” and “individual with a disability” are intended to have the same meanings as those terms in Title I of the ADA. For more information about the relationship of these terms to one another, see Question 4.