

WASHINGTON STATE HUMAN RIGHTS COMMISSION

GUIDE TO HONORABLY DISCHARGED VETERAN AND MILITARY STATUS and WASHINGTON STATE NONDISCRIMINATION LAWS



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Q: Who is protected under the law?

A: Any individual who has served in the United States armed forces and honorably discharged, including service members of the Army, Navy, Air Force, Marines, and Coast Guard, and members of the National Guard and armed forces Reserves. In addition, all active or reserve members of any branch of the armed forces of the United States are protected, including the National Guard, Coast Guard, and armed forces Reserves.

Q: In what areas is veteran and military status protected?

A: Employment, credit, places of public accommodation, and real estate.

Q: Can an employer give preferential treatment to veterans in hiring?

A: There is nothing in Washington state non-discrimination law which states that an employer cannot choose or give preference to a veteran for a position due to their veteran status. In addition, an employer can certainly consider an applicant's military experiences and training when evaluating an applicant's skills, knowledge and abilities. However, if an employer does give preferential treatment to veterans in hiring, the employer must make sure that they are not doing so to the detriment of another protected class, such as persons over 40 or women. For example, if an employer wishes to hire Iraq or Afghanistan war veterans for all or a majority of positions, this could have an adverse impact on women (since women only comprise 15% of the armed forces) and persons over 40 (since veterans of more recent wars would tend to be younger), and women and persons over 40 may then have a valid discrimination claim.

Q: Does an employer need to give veterans' preferences or add veteran points in hiring?

A: Some employers must do so in certain situations, including federal and state employers and some federal contractors. Private employers without federal contracts are not under any obligation to give a veteran preference or points in hiring. The Washington State Human Rights Commission does not enforce veterans' preference, though. If an applicant believes that they were denied veterans' preference points or preference, then the veteran should contact an elected official, such as a mayor or commissioner, in the city or county that posted the job, to question the decision. If the veteran still believes that they were denied veterans' preference, they may need to contact an attorney for legal advice.

Q: What questions can an employer ask during a job interview or on an application about veteran or military status?

A: To obtain information about the applicant's skills, training, and experience, an employer can ask about military experience. An employer cannot ask questions about

service related injuries or disabilities, or any information in general about disability issues. An employer cannot ask if an applicant is undergoing any type of treatment or counseling.

Q: Can an employer decide to not hire a veteran due to concerns that the person won't fit in with the rest of the workforce?

A: No, an employer cannot make decisions about hiring based on veteran or military status, or due to an employer's belief that a veteran will have a certain attribute or trait. An employer should not make assumptions about persons in the military or stereotype persons in the military. If a veteran is the person who best matches the skills, knowledge, abilities, and experience needed for the job, than the employer should hire the veteran.

Q: Can an employer decide not to hire a veteran due to concerns about PTSD or other combat related disabilities?

A: No, an employer cannot make employment decisions due to an assumption that a veteran will have PTSD (or any other disability). An employer cannot decide not to hire someone because they know or suspect that the person may be a person with a disability; this could be both veteran status discrimination and disability discrimination.

Q: What if a veteran is experiencing harassment at work?

A: If a veteran is the subject of harassment based on the fact that he or she is a veteran, or due to a service related disability, the veteran should make it clear that this type of behavior is unwelcome. Meanwhile, the veteran should take notes on what is happening, when it happens, and who is the perpetrator, in order to document the behavior. If making it clear that the behavior is unwelcome does not work, the veteran should make a complaint to his or her manager or to the company human resources department, and allow the employer time to take appropriate action. Preferably, the complaint should be in writing and the veteran should keep a copy. If the complaint does not stop the harassment, then the veteran can file a case with the Washington State Human Rights Commission, or seek legal advice from an attorney.

Q: What should an employer do about harassment?

A: An employer has an obligation to take prompt and remedial action to stop harassment as soon as the employer becomes aware of it. An employer should conduct an investigation, including speaking to witnesses. An employer should separate the parties (the complaining party and the accused party) while conducting an investigation, but should never send the complaining party home (unless they request this) or do anything that impacts the complaining party's job. If the harassment is confirmed, the employer should take appropriate action against the offending party, and document the action.

Q: What type of behavior could constitute harassment?

A: The harassment might be in the form of jokes about service members, name-calling based on military status or disability, continuous and negative comments related to the person's service or disability, or frequent voicing of stereotypes related to military status. In order to constitute harassment, the behavior must be severe or pervasive, and must impact the terms and conditions of employment. It is probably not enough to constitute harassment if co-workers discuss anti-war sentiments or voice negative opinions about the military in general or actions of military members unrelated to the veteran co-worker.

Q. Can an employer terminate the employment of a veteran if they are diagnosed with PTSD, due to safety concerns?

A: No, an employer cannot take an adverse employment action because of a diagnosis of PTSD (or any other disability.) If any employee has a disability and requests a reasonable accommodation, an employer must engage in an interactive process with the employee. (For further information on disability issues, see the WSHRC's Guide to Disabilities and Washington State Nondiscrimination Laws.) If any employee violates a workplace rule, or takes an action which is threatening or dangerous, that person, in most circumstances, can be disciplined for that action. In this type of situation, if the offending employee happens to be a veteran, the employer must take the same action that it would take against any other employee in a similar situation. There are situations in which, before firing an employee for workplace behavior that is related to a disability, the employer must enter into a dialog to attempt to reasonably accommodate the employee (see the WSHRC's analysis of the *Gambini* decision for further information, and consult an attorney on this complicated issue.)

Q: What happens when a veteran returns to his or her former job, but now cannot perform the duties of that job due to a service-related disability?

A: The employer and veteran should work together to find a reasonable accommodation that would allow the veteran to do their former job. This could include obtaining information from the veteran's physician. If the veteran is unable to perform the job either with or without reasonable accommodation, the employer should determine if there are any open positions that would accommodate the veteran's disability and that the veteran is qualified to do. If that is not an option, the employer and employee should consider whether a medical leave of absence would allow the employee time to recover and then return to his or her job.

Q: When does an employer need to give time off due to military service?

A: An employer must allow a Reservist to take time off for their two weeks of mandatory service per year and for deployment or other absence due to a military order. If the service member pursues additional military training, the employer should be

flexible about allowing the service member time off for training. If it is an undue hardship for the employer to allow the service member the time off at a particular time, the employer could potentially require the service member to schedule the training at a different time. The employer would need to be able to prove the undue hardship.

An employer may also have obligations to grant time off to military spouses during circumstances involving deployment. Please address questions related to this issue to Protected Leave Specialist, Washington Department of Labor and Industries, at (360) 902-4930. (See more below.)

If a service member needs routine medical care related to service, an employer should grant time off as it would any other employee for medical or dental care. If the medical care is mandatory in preparation for deployment, the employer must allow the employee the time off.

If a veteran needs medical care, treatment, or counseling due to a service related disability, the employer should provide medical leave as a reasonable accommodation.

Q: What other resources are there for veterans and those employing veterans?

A: The Uniformed Services Employment and Reemployment Rights Act (USERRA) gives veterans the right to be reemployed in their civilian job if they leave that job to perform service in the armed forces and meet certain other criteria. In addition, USERRA gives veterans the right to be free from discrimination and retaliation in employment due to status as a veteran. Contact the Veterans' Employment and Training Service (VETS) for enforcement or further information. VETS also enforces veterans' preference in federal hiring.

E-mail: contact-vets@dol.gov

Tel: 1-866-4USADOL (1-866-487-2365) or 1-202-693-4770; TTY: 1-877-889-5627

For information on federal contractors and veterans' preference contact the Office of Federal Contract Compliance Programs (OFCCP).

E-mail: OFCCP-Public@dol.gov

Tel: 1-866-4USADOL (1-866-487-2365) or 1-800-397-6251; TTY: 1-877-889-5627

You can also contact the Washington Department of Veterans Affairs for general information about a wide variety of veterans' benefits, services and programs, as well as resources for returning service members. You may contact WDVA for assistance by emailing benefits@dva.wa.gov or by calling 1-800-562-2308 Monday-Thursday 7:00am-6:00pm.

The Washington Department of Labor and Industries enforces Military Family Leave, RCW 49.77, which applies to all employers and to all employees who work for an

average of 20 hours per week in the Washington state and who are spouses of members of the national armed forces, National Guard, or reserves. This law requires that when the military personnel is called to active duty or is deployed during a period of conflict as defined, the spouse is entitled to unpaid leave as follows:

- i. For a total of 15 days per deployment;
- ii. After the military spouse has been notified of an impending call or order to active duty and to take the leave prior to the spouse leaving for deployment, or when the military spouse is on leave from deployment.

For specific questions related to compliance and enforcement, please contact Protected Leave Specialist, at (360) 902-4930.

If you need additional information, have additional questions, or wish to have training for your organization, please contact the WSHRC at 360-753-6770 or 800-233-3247 (TTY 800-300-7525). Additional information on this and other civil rights issues can be found on our website at www.hum.wa.gov. This document does not constitute legal advice; if you have a particular situation about which you need legal advice, you should contact your attorney.