

Implementing a Veteran-Hiring Program in the Technology Industry

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Roadmap: Implementing a Veteran-Hiring Program in the Technology Industry

- Overview – Veterans Employment Landscape
- Government Policies to Facilitate a “Career Ready” Military
- Employer Incentives for Hiring Veterans
- Veterans and the Technology Industry
- Recruiting and Retention
- Strategic Design and Implementation Considerations
- Legal Implications – Title VII, Non-Discrimination Laws, USERRA, and OFCCP Compliance
- Next Steps for Employers

Veterans Employment Landscape

- Approx. 21.9 million living veterans in America today
- More than 200,000 service members will transition from active duty service over the next five years
 - Drawdown in Afghanistan
 - Reduction in end strength
- Overall, veteran unemployment rates are slightly below the national average
 - However, our youngest veterans are unemployed at substantially higher rates than nonveterans

Government Initiatives to Ease Transition and Facilitate a “Career Ready” Military

- Expanded Post-9/11 GI Bill (GI Bill 2.0) allowing veterans to use benefits to pay for vocational education and on-the-job apprenticeship training
- Transition GPS – redesigned Transition Assistance Program
 - Mandatory pre-separation program to prepare separating and retiring service members for life outside the military
 - MOS Classification Crosswalk, DOL employment workshop, entrepreneur track, accessing higher education, career technical training

Government Initiatives to Ease Transition and Facilitate a “Career Ready” Military

- Vocational Rehabilitation Employment Program:
<http://www.benefits.va.gov/vocrehab/>
 - Employment services training for veterans to help with job training, employment accommodations, resume development, and job-seeking skills coaching
 - Special Employer Incentives (SEI) program
 - *A participating employer reimbursed for up to 50% of the veteran’s salary during the SEI program*
- Presidential challenge to private sector to hire veterans
- VOW to Hire Heroes Act
 - Codified many of these changes
 - Tax credits for hiring veterans

Employer Incentives for Hiring Veterans

- Returning Heroes Tax Credits (Federal)
 - Veteran-hiring tax credit incentive to hire unemployed veterans
 - *Tax credit of up to \$5,600 for hiring veterans who have been looking for a job for more than six months*
 - *\$2,400 credit for veterans who are unemployed for more than four weeks, but less than six months*
 - *Tax credit of up to \$9,600 for hiring veterans with service-connected disabilities who have been looking for a job for more than six months*
 - Expired on December 31, 2013
 - *Extension currently being considered in Congress*

Employer Incentives for Hiring Veterans

- Many states have active veteran-hiring tax credits
- Federal and state resources to defray training costs
 - Examples:
 - *Connecticut’s “Hire Veterans First” initiative – grants to businesses hiring veterans to defray training costs*
 - *Minnesota’s “Show-Me Heroes” program – On-the-job training program; reimburses employers for 50% of participating veterans’ wages during a contracted training period*

Private Employer Hiring Challenge

- In August 2011, President Obama challenged private businesses to commit to hire or train 100,000 veterans by the end of 2013
 - Managed by “Joining Forces” – First Lady and Dr. Biden’s initiative to support military families and veterans
 - Businesses have made “Joining Forces” commitments to hire more than 540,000 veterans and military spouses
 - *Fixed number of veteran hires*
 - *Percentage-based goals (e.g., 15% of new hires will be connected to the military)*
 - *Independent or industry-wide programs administered by an association of sector-based employers*

Veterans and the Technology Industry

- Veterans are uniquely suited for technology jobs
 - Maintenance and technical support skills
 - Security culture
- According to Monster.com, jobs in the IT industry are the most desired occupations among its veteran users
- Technology industry programs and partnerships
 - Vets in Tech
 - U.S. Tech Vets – Northern Virginia Technology Council
 - Warriors 4 Wireless
 - *Industry-based organization focused on training veterans to provide the five most critical certifications for employment in the wireless industry, as well as baseline skills for other telecom positions*

Veterans and the Technology Industry – Programs and Partnerships

- Vets in Tech
 - Bringing together a tech-specific network, resources, and programs for veterans interested in education, entrepreneurship, and employment
- U.S. Tech Vets
 - Collaboration between the Consumer Electronics Association and the Northern Virginia Technology Council
 - Technology industry career portal connecting veterans with meaningful jobs in the technology association
- Warriors 4 Wireless
 - Industry-based organization committed to recruiting, training, certifying, and finding jobs for 5,000 veterans over three years
 - DYNIS, the Wireless Infrastructure Association, Competitive Carriers Association, T-Mobile, MasTec, PricewaterhouseCoopers and others

Veterans and the Technology Industry – Translating Military Skills



CONNECTING VETERANS WITH JOBS & EMPLOYERS WITH VETERANS

Home

My Account ▾

Veteran Info Center ▾

Help and Security ▾

About Us ▾

[Sign In](#) or [Join Us](#)

EMPLOYERS

MILITARY EXPERIENCE

Define your military experience

by adding your Military Job Title (for example, your MOS, MOSC, Rating, Designator), then select your subspecialties, collateral duties, specialized training, and schools.

Add Military Job Titles, Subspecialties, and Training:

Add Military Job Title +

25B Information Technology Specialist (Army - Enlisted) ▾

[Delete](#) -

+ [Add/Edit Your Subspecialties and Training](#)

CIVILIAN SKILLS

By selecting civilian skills that relate to your military experience or career goals, you'll be able to finely tune the job postings available to you and better understand your opportunities.

Your Civilian Skills: Select/Deselect to Refine Job Postings

Add Civilian Skills +

Electronic Data Security

[Delete](#) -

Electronic Device/System Installation/Repair

[Delete](#) -

Integrated Electronic Systems

[Delete](#) -

Recruiting – Sourcing Candidates

- Designated position for veteran recruiting, outreach, and retention
- Translating military skills into civilian industry-recognized credentials
- Understanding what makes a veteran candidate valuable
- Recruiting tools for identifying qualified job candidates
 - Government resources
 - Private and non-profit partnerships and initiatives
 - Placement agencies

Recruiting – Sourcing Candidates

- New VA Veterans Employment Center
 - www.ebenefits.gov
 - Comprehensive database to match veteran job seekers with employers
 - Online resume building and military skills translator
 - Targeted job searches based on specific career paths
 - Resources for employers

Veterans Employment Center



A Service of the Department of Veterans Affairs and the Department of Defense

Log in

Register

- apply for **BENEFITS**
- view my **STATUS**
- access my **DOCUMENTS**
- browse **NAT'L RESOURCE DIRECTORY**
- employment **CENTER**
- search

Employers

Tools

- Manage Profile
- Search Résumés
- Post Jobs
- Make a Hiring Commitment

Resources

- Workplace Support
- Upcoming Veteran Career Fairs
- Understanding the Military Experience
- Other Resources

Are you a veteran job seeker?

[Visit the Job Seeker Section](#) to search jobs, translate your skills, and build a résumé.

Welcome to your Employment Center for

Employers

Search Résumés



Search for Veterans and transitioning Service members whose skills and

attributes match your job openings.

> [Search Veteran Résumés](#) ↗

Post Jobs



Post your organization's job openings free of charge in the eBenefits Employment Center in

two steps.

> [Learn how to post jobs](#) ↗

Make a Commitment



Let job seekers know your organization is committed to hiring Veterans and

transitioning Service members.

> [Learn more about commitments](#) ↗

Why Hire a Veteran?

Unique Training and Skills

The military workforce is the best source for recruiting highly qualified and experienced employees. Veterans make excellent employees in the workforce because of their military training and skills:

- > Veterans have obtained skills in leadership, teamwork, and performance under pressure.

Debunking the Myths



Recruiting – Screening Candidates

- Training for HR and Hiring Managers
 - Dos and Don'ts for interviewing
 - *Beware of stereotypes*
 - *Tailor questions to allow veterans to apply the questions to their military experience, not focused on prior civilian work experience*
 - *Avoid asking:*
 - What type of discharge the veteran received
 - Whether a National Guard member will deploy soon

Recruiting – Screening Candidates

- Training for HR and Hiring Managers (cont'd)
 - EEOC Guidance on hiring wounded warriors
 - *Equal Employment Opportunity Commission: Veterans and the Americans with Disabilities Act: A Guide for Employers* (February 2012)
 - An employer may ask an applicant to voluntarily self-identify as a “disabled veteran”
 - Guidelines for inviting applicants to self-identify
- States may have additional restrictions on pre-hire inquiries about a veteran’s disability status
- Attention to disability accommodation issues

Retention

- Creating a veteran-friendly workplace
 - Employee Assistance Programs
 - Mentoring
 - *In the technology industry, some companies have been successful at creating long-term, sustained veteran-veteran relationships through mentoring programs*
 - Overall executive-level support and messaging from C-Suite
 - Recognition of service and celebration of veteran holidays
 - Internal affinity groups (e.g., veterans' networks, military family groups)

Legal Implications

- The federal government and virtually all states grant some form of employment preference to veterans
- Private employer voluntary preferences are treated differently
- While there is no flat-out legal impediment to designing a veteran-hiring initiative, there are several legal considerations, and employers should minimize risks accordingly

Legal Implications – Title VII

- A veteran's hiring preference could be challenged under Title VII if resulting hiring data showed an adverse impact against female candidates
 - Approximately 15% of active duty force is female
- Title VII contains statutory exemption from claims based on veteran's hiring preferences *required by local, state, or federal law*

Legal Implications – Title VII

- *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979)
 - In a two-step analysis, the Supreme Court upheld a Massachusetts statute that granted a hiring preference to veterans against a challenge under the Equal Protection Clause of the Fourteenth Amendment. The Court concluded that the statutory classification was gender-neutral and that, notwithstanding its adverse impact upon the employment opportunities of women, it was not enacted with discriminatory intent.

Legal Implications – Title VII

- No Title VII exemption for voluntarily adopted veteran-hiring initiatives
- Equal Employment Opportunity Commission's (EEOC's) formal position is that the use of a veterans hiring preference will be assumed to have an adverse impact against women unless an employer can prove otherwise, with narrowly drawn statistics or its own applicant flow data.
 - *EEOC Notice No. N-915.056, Policy Guidance on Veterans' Preference Under Title VII (Aug. 1990)*

Legal Implications – Title VII

- *Bailey v. Southeastern Area Joint Apprenticeship Committee*, 561 F. Supp. 895, 912 (N.D. W.Va. 1983)

“Title VII, unlike various other statutes and other government regulations which have been enacted since World War II, does not accord veterans any employment preferences. Rather, Title VII seeks to secure equality of employment opportunity for members of certain protected classes. Inasmuch as veterans are not a protected class under Title VII, the statute leaves no room for a veteran preference which has a disparate impact on a protected class, e.g., women.”

Legal Implications – Title VII

- EEOC has not weighed in since 1990 on veteran-hiring preferences' potential disparate impact on women
- Some states have enacted permissive statutes allowing private employers to implement veteran-hiring preferences without penalty
 - 2011 – Washington
 - 2012 – Minnesota
 - 2013 – Arkansas, North Dakota
 - 2014 – Florida, Maine, Iowa (awaiting signature)
 - Legislation pending in several other states
- State permissive statutes will not prevent a federal claim from moving forward

Legal Defenses to Disparate Impact Claims

- Tax credits may meet the standard for a “business necessity” defense
- Congressional indications of its intent to encourage private sector veteran hiring:
 - Congressional Veterans Jobs Caucus
 - Congressional “I Hire Vets” initiative
 - Pending legislation
 - *Hire More Heroes Act*
 - *Veteran Employment Transition Act*

Risk Management Options for Disparate Impact Claims

- “Aspirational” veteran-hiring goal that does not involve preferences
- Veteran-hiring preference while collecting gender data from all applicants to assess possible adverse impact
- Focus initiative in states with statutes that protect private employers’ veteran-hiring preferences
- Focus on hiring veterans for which tax credits are readily available (e.g., unemployed, disabled)
- Focus initiative on both veterans and military spouses
 - Broaden applicant pools to include more female candidates

Legal Implications – Non-Discrimination Laws

- Several states recognize veterans as a protected class in their non-discrimination laws
- Congress has considered veteran non-discrimination legislation, but without much success:
 - Veterans and Service Members Employment Rights and Housing Act of 2013
 - *Would prohibit discrimination on the basis of military service or veteran status*
 - *Unlikely to move this congressional session*

Legal Implications – USERRA

- USERRA considerations
 - USERRA protects members of any uniformed service from discrimination and retaliation by employers
 - Employers cannot deny initial employment, reemployment, retention in employment, promotion, or any benefits of employment to individuals covered by USERRA because they belong to that protected group
 - Employers cannot retaliate by taking adverse employment actions against individuals seeking protection under USERRA

Legal Implications – USERRA

- Failing to provide the same opportunities leading to promotion to employees due to their military service can constitute discrimination
 - *Sandoval v. City of Chicago*, No. 07 C 2835, 2008 WL 2743750, at 5 (N.D. Ill. June 13, 2008)
- Service members must provide reasonably clear notice to their employers of their impending military service
 - *Hays v. Communication Technology, Inc.*, 753 F. Supp. 2d 891 (S.D. Iowa 2010)
- The employer is not required to hold the employee’s job indefinitely; an employer may lawfully choose not to rehire an employee after five years
 - *Erickson v. U.S. Postal Service*, 571 F.3d 1364, 1369-70 (Fed. Cir. 2009)
- If a returning service member's position has been eliminated as part of a reduction in force, the employer is excused from its reemployment obligation
 - *Milhauser v. Minco Products, Inc.*, 855 F. Supp. 2d 885 (D. Minn. 2012)

Targeted Recruitment of Protected Veterans Required of Employers Subject to OFCCP Regulations

- OFCCP regulations have long required federal contractors and subcontractors to engage in targeted recruitment of certain classes of veterans
- OFCCP recently revised the affirmative action regulations to require expanded recruitment efforts for protected veterans
- The expanded recruitment obligations become effective with the employer's next AAP cycle
 - For employers with calendar-year AAPs, the effective date of the expanded good-faith effort obligations is January 2015

Targeted Recruitment of Protected Veterans Required of Employers Subject to OFCCP Regulations

- OFCCP affirmative action regulations now require targeted recruitment of “Protected Veterans”
- “Protected Veterans” is a general term that includes the following specific veteran categories:
 - *Armed Forces Service Medal veterans*
 - *Disabled veterans*
 - *Recently separated veterans*
 - *Active duty or wartime campaign badge veterans*
- The new regulations contain detailed definitions of these veteran categories

Targeted Recruitment of Protected Veterans Required of Employers Subject to OFCCP Regulations

- The new OFCCP affirmative action regulations suggest using the following types of recruitment sources to attract qualified veterans for job opportunities:
 - The Local Veterans' Employment Representative in the local employment service office (i.e., the One-Stop) nearest the contractor's establishment;
 - The Department of Veterans Affairs Regional Office nearest the contractor's establishment;
 - The veterans' counselors and coordinators ("Vet-Reps") on college campuses;
 - The service officers of the national veterans' groups active in the area of the contractor's establishment;
 - Local veterans' groups and veterans' service centers near the contractor's establishment;
 - The Department of Defense Transition Assistance Program (TAP), or any subsequent program that, in whole or in part, might replace TAP; and
 - Any organization listed in the Employer Resources section of the National Resource Directory ([http:// www.nationalresourcedirectory.gov/](http://www.nationalresourcedirectory.gov/)), or any future service that replaces or complements the organization.

OFCCP Regulations Require Contractors to Assess the Effectiveness of Veteran-Recruitment Efforts

- The new OFCCP regulations require contractors to assess whether their targeted recruitment efforts have resulted in hiring of Protected Veterans
- Annual assessment that must be documented in contractors' affirmative action programs
- In the annual assessment of recruitment efforts, a contractor must consider the number of Protected Veterans that applied and the number that were ultimately hired
 - Number of Protected Veterans hired must be considered against hiring benchmarks of 8%

OFCCP Regulations Require Contractors to Assess the Effectiveness of Veteran-Recruitment Efforts

- The 8% hiring benchmark is intended to be used only as a way to evaluate the effectiveness of the veteran-recruitment efforts
 - Not designed to be a goal or objective that must be satisfied
- OFCCP makes clear in the regulatory discussion that the targeted recruitment obligation and hiring benchmarks do not provide a defense to gender-based disparate impact claims under Title VII. See 71 Fed. Reg. 58,639.

Targeted Recruitment of Protected Veterans Required of Employers Subject to OFCCP Regulations

- The OFCCP website has resource pages for employers that links to various organizations and tools that can be considered in developing robust veteran-recruitment programs:
 - http://www.dol.gov/ofccp/regs/compliance/resources_recruit.htm
 - http://www.dol.gov/ofccp/regs/compliance/resources_recruit_disability.htm

Next Steps for Employers

- Assemble designated team from HR, Legal, and other key departments
 - Evaluate feasibility of monitoring initiative under attorney direction for privilege purposes
 - Review applicant flow data and demographic hiring trends
 - Set realistic hiring goals: assess hiring needs and location targets
 - *Consider proximity to military bases that offer recruiting opportunities*
 - Determine a timeline, including date of rollout and anticipated date of reaching goal

Next Steps for Employers: Strategic Design and Implementation

- Decide the scope of the initiative and to whom it will apply; consider inclusion of other military-connected populations:
 - Military spouses offer geographic mobility and increase female applicant pool
 - *Military Spouse Employment Partnership:*
<https://mseppjobs.militaryonesource.mil/video/military-spouse-employment-partnership>
 - National Guardsmen and Reservists become an active part of the workforce that can help build a military-friendly workplace
 - *Employer Support for the Guard and Reserve:*
<http://www.esgr.mil/site/Home/tabid/55/Default.aspx>

Next Steps for Employers: Strategic Design and Implementation

- Communications and engagement opportunities
 - Amplify messaging through marketing teams and external branding opportunities
 - *Joining Forces*
- Strategic partnerships
 - Veterans service organizations
 - Industry programs and partnerships

Resources

- Vocational Rehabilitation Employment Program:
<http://www.benefits.va.gov/vocrehab/>
- National Resource Directory:
<https://www.ebenefits.va.gov/ebenefits/nrd>
- America's Heroes at Work LinkedIn group:
<http://www.linkedin.com/groups?gid=1842767>
- America's Heroes at Work:
www.AmericasHeroesatWork.gov
- Military to Civilian Crosswalk Search:
<http://www.onetonline.org/crosswalk/MOC/>
- Employer Support for the Guard and Reserve:
<http://www.esgr.mil/site/Home/tabid/55/Default.aspx>
- Military Spouse Employment Partnership
<https://msejobs.militaryonesource.mil/video/military-spouse-employment-partnership>

Our Team



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Joyce E. Taber is a partner in Morgan Lewis's Labor and Employment Practice and is a member of the firm's Complex Employment Litigation team. Ms. Taber's practice focuses on defending corporate clients in employment litigation and wage and hour matters, including classwide allegations, in federal and state courts. Ms. Taber also represents clients before the federal Equal Employment Opportunity Commission and state/local fair employment agencies. Her practice includes litigation and client counseling under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the Uniformed Services Employment and Reemployment Rights Act, and other federal and state employment laws.

Ms. Taber's practice also includes conducting board-level independent investigations regarding alleged code of conduct violations, workplace harassment claims, and whistleblower allegations. Ms. Taber also provides advice on litigation avoidance, statutory compliance, employment policies and procedures, reductions in force, executive employment contracts, and separation/noncompete agreements. Ms. Taber currently serves as the elected co-chair of the District of Columbia Bar's Labor and Employment Law Section Steering Committee and serves on the Section's Class Action Committee.

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Kirsten B. White is an associate in the Labor and Employment Practice. Ms. White has spent her legal career in both high-level public sector positions and in private practice, and her unique experience gives her a well-rounded approach to the representation of her clients. In her years in public service leadership positions, she has managed high profile government projects, and handled complex policy, communications, and public engagement issues.

Ms. White was an associate in Morgan Lewis's Labor and Employment Practice from 2007 to 2009, rejoining the firm in 2013. Her practice covers a wide range of labor and employment law matters, including wrongful termination and discrimination litigation, employee benefits issues, and matters arising under the National Labor Relations Act and the Railway Labor Act.

In 2009, Ms. White joined the Office of the Vice President of the United States, where she served as the Policy Director to Second Lady Dr. Jill Biden. In that role, Ms. White developed substantial domestic policy experience, particularly on issues related to education, workforce training, veterans, military families, and women's health.

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