

Labor and Employment Law Update **Lawyers for Employers®**

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Recruiting Veterans and Respecting Their Rights

This Veterans Day, we encourage employers to take a moment to evaluate their policies and practices with respect to veterans, service members and their families. As more veterans are returning from duty, federal and state lawmakers are busy trying to find ways to give employers incentives for implementing and/or improving their outreach and recruitment strategies for protected veterans and their families. Employers should also take care to remember that applicable federal and state laws provide certain protections for veterans, service members and their families.

Incentives for Actively Recruiting Protected Veterans and Their Families

Authorized Preferential Treatment of Veterans and Their Families. For years, federal law has given preferential treatment to certain veterans in federal hiring practices under the Veterans Employment Opportunity Act. The state of Washington has extended similar preferences to the public and private sectors.

For employers operating in Washington, Chapter 73.16 RCW already *requires* public employers to give preference to honorably discharged veterans, their widows or widowers, and spouses and registered domestic partners of honorably discharged veterans with a “service connected permanent or total disability.” On July 22, 2011, Washington House Bill 1432 became effective, permitting private employers in Washington to *voluntarily* provide these same preferences.

In brief, private employers in Washington who want to reward protected veterans and their families for their services may, with the Legislature’s approval, take proactive measures to reach out to veterans and their spouses or registered domestic partners and, in some circumstances, to provide preferential treatment during the hiring process.

Increased Affirmative Action Requirements With Respect to Veterans. Employers subject to the Affirmative Action Program’s (“AAP”) requirements of the U.S. Department of Labor (“DOL”) Office of Federal Contract Compliance Program (“OFCCP”) already have certain obligations with respect to the outreach and recruitment of protected veterans under the Vietnam Era Veterans’ Readjustment Assistance Act (“VEVRAA”). Employers who are unsure whether or not they are subject to these requirements should consult legal counsel. For example, many long

term care facilities may be subject to these requirements if they have 50 or more employees and provide more than \$50,000 in services to active or retired military under a contract with the Department of Veterans' Affairs or the Department of Defense.

Additional affirmative action obligations with respect to protected veterans are on the horizon. In April 2011, the OFCCP issued a Notice of Proposed Rulemaking ("NPRM") to amend its regulations implementing Section 4212 of VEVRAA. The new regulations are intended to address the increasing number of veterans returning from duty in Iraq, Afghanistan and elsewhere. Additional information about the DOL's NPRM can be found here: http://www.dol.gov/ofccp/regs/compliance/faqs/VEVRAA_NPRM_faq.htm. Employers may want to engage legal counsel now to evaluate and prepare for the anticipated changes.

A Reminder About Protections for Veterans, Service Members and Their Families

While preferential treatment of veterans and their families may be permitted, discriminatory treatment of veterans and service members is prohibited by applicable federal and state laws. For example, the Uniformed Services Employment and Reemployment Rights Act ("USERRA") protects veterans and service members against discrimination based on past, present or future military service. Washington's Law Against Discrimination was amended in 2007 to include "honorably discharged veteran or military status" as a protected class. Oregon similarly prohibits discrimination "because a person is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service" (ORS 659A.082).

Employers should also keep in mind that applicable federal and state leave laws may provide additional leave rights for protected service members and their families. USERRA guarantees an employee returning from military service or training certain reemployment rights and benefit protections. Employees with military family members may be entitled to take leave under the federal Family and Medical Leave Act, provided coverage requirements are met. Additional leave rights and benefit protections may also be available to service members and their families under applicable state leave laws such as Washington's Military Family Leave Act and Oregon's Military Family Leave Act. When faced with a potential leave request, employers of service members and their families should consult their legal counsel for assistance in navigating through the sea of applicable federal and state leave requirements.

What Should Employers Do Now?

- Employers should immediately review their equal employment opportunity policies and practices, whether in their handbooks or otherwise, to make sure they prohibit all applicable forms of harassment or discrimination on the basis of any applicant's or employee's protected status, and provide for all required military leave and military family leave under all applicable laws.
- Employers subject to the AAP requirements of the OFCCP should also review their affirmative action policies and practices to ensure current compliance with VEVRAA. Such employers may also want to take proactive steps now to start looking for ways to

increase their outreach and recruitment of protected veterans before the OFCCP's proposed rulemaking is finalized.

- In addition, private employers operating in Washington may want to consider taking advantage of Washington's voluntary preferential treatment laws to train managers and hiring personnel regarding the benefits of extending employment opportunities to honorably discharged veterans, their widows and widowers, and the spouses and registered domestic partners of honorably discharged veterans with a "service connected permanent or total disability."

And, finally, we encourage you to take the time today to thank a veteran or veteran's family member.

For more information, please contact the Labor and Employment Practice Group at Lane Powell: employlaw@lanepowell.com

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