

Employment Discrimination against Veterans at The Department of Veterans Affairs (VA)

Discrimination against Veterans seeking employment at the VA occurs at sites and stations due to a management structure that has limited oversight ensuring compliance with Federal Law, VA Policies and Directives.

The management hierarchy at the Veterans Health Administration is a top down structure with the VA Central Office (VACO) in Washington at the top and 21 Veterans Integrated Service Networks (VISN) spread throughout the country. At the VISN level the management structure flattens out whereas VA Medical Center Directors and Clinics report to the VISN Network Director. Site or Station Directors are in charge of their local Human Resources Department and choose their level of participation in the areas of recruitment, retention and promotion of Veteran employees.

This is why some sites have a high percentage of Veteran employees and other sites actively discriminate against Veterans. The system is set up so they can do whatever they choose. Here are the problem areas and what Congress can do to help fix them.

5 and 10 Point Veterans Preference

Veterans Preference hiring is, in general, not used at the VA. Also, many veterans do not qualify for veteran's preference because they did not serve on active duty during a period of war or are not service connected disabled.

Title 5, United States Code, Section 2108 (5 USC 2108) veterans' preference eligibility is based on dates of active duty service, receipt of a campaign badge, receipt of a Purple Heart, or a service-connected disability. 5 points are awarded for wartime service and 10 points for a service-connected disability.

These points are only used for non-Federal employee applicants applying for a job announcement on USA Jobs for the initial screening. Current Federal employees who are Veterans, are not eligible for Veterans preference points, and must compete for the job with no help.

The Delegated Examining Unit (DEU) or local Human Resources (HR) Department conducts the initial screening. The initial screening usually consists of job related questions that the applicant is scored on and the applicants resume. The scoring usually totals a maximum of 125 points for a highly qualified applicant. The 5 or 10 point preference is used to help get the applicant closer the 125 point maximum but not over the maximum.

The top scoring applicants are forwarded to the local HR Specialist for further screening and then ultimately to the hiring department manager. The hiring manager then decides which applicants to interview. With the exception of initial screening of outside candidates, there is no Veterans preference given during the entire hiring process.

How Congress can help

- Veterans Preference should be extended throughout the entire hiring process all the way to final interview.
- The preference system screening process should be changed from subjective to objective with set standards to adhere to.
- Update points system to a meaningful value to Veterans preference in relationship to maximum score.
- Award 5 points to all Veterans
- Maintain 10 points for service connected disability.
- Award 15 points to Purple Heart recipients

Veterans Job Application Status Notification

When a Veteran applies for a job announcement on USA Jobs, they often never hear back from USA Jobs for non-selection. A Notification of Results (NOR) is supposed to be mailed and/or emailed back to the job applicant. The NOR will state that another applicant was selected for the position.

The NOR is intentionally not completed by the hiring VA station HR Specialist. Often because a lesser qualified non-Veteran candidate was selected. There is no system in place to insure that HR Specialist complete this process. By not notifying the Veteran, he/she has no ability to file a U.S. Equal Employment Opportunity Commission (EEOC) complaint. This is because you have to file a complaint within the 45 day notification period. This is a tactic used by VA stations that actively discriminate against Veterans, to minimize EEOC complaints filed against that station.

How Congress can help

- Congress should require United States Office of Personnel Management, which operated the USAJobs website, to enforce NOR policy.
- VA Stations that are in non-compliance should be reported to VA Central Office (VACO) in Washington DC.
- NOR's should include information on how to file a complaint through the VA Office of Resolution Management, if you feel you were discriminated against.

Special Hiring Authority Non-Use and Abuse

The Schedule A appointing authority for people with certain disabilities, 5 CFR 213.3102(u), is an excepted service authority that agencies can use to appoint individuals, including veterans who have a psychiatric, intellectual or severe physical disability. The direct hiring authority supersedes all VA hiring policies, procedures, union contract rules. Applicants can be hired based on as little as a resume submitted and no job interview is required. People hired under this authority are then placed on a Schedule A two year special probationary period, and upon completion become a permanent VA employee.

When a 30% or more disabled Veteran applies for a job on USA Jobs he/she is eligible for a direct hire Schedule A appointment. This is offered on the USA Jobs website. The applicant checks the disability box and uploads the supporting documentation. The application is coded Schedule A. State certified disabled Veteran and non-Veteran applicants can also use the Schedule A process.

There is no requirement for VA stations to review, interview or hire Schedule A applicants. Most often they are rejected and not referred to the hiring managers with other applicants.

The system is abused by VA stations taking credit for Schedule A hires when they in fact, did not use the Schedule A authority. What they do is use the standard VA hiring process to recruit new employees or promote existing VA employees. If a disabled person is selected for the position, local HR annotates the employee's SF-50 form to show a Schedule A appointment.

What they are doing is taking credit for a direct hiring process that they did not use. Also, the existing employee who was selected for a promotion is put back on a probation period that non-disabled applicants are not subject to. Every time a disabled Veteran changes jobs they start probation over again. Standard hires only have to serve one year on probation, whereas disabled Veterans can serve probation indefinitely dependant on job changes.

How Congress can help

- Require that all qualified Schedule A job applicants be forwarded for review by VA hiring department managers.
- Require that VA Central Office develop policies, procedures and rules on Schedule A hiring and enforce them.
- Require that VA stations show proof that they actually used the Schedule A hiring authority before taking credit for using it.

Behavioral Base Job Interviews

Behavioral based interviewing is interviewing based on discovering how the interviewee acted in specific employment-related situations. The logic is that how you behaved in the past will predict how you will behave in the future, i.e., past performance predicts future performance.

The interview is basically a 5 to 10 question test, where the applicant answers questions that he/she does not know in advance, about past job related experiences and how they handled them. Good memory and clear articulation of thought is essential to receive a high score on this test.

Mentally disabled Veterans perform poorly on this test due to their disability. Their memory is impaired due to Traumatic Brain Injury (TBI) or partially blocked due to Post-traumatic stress disorder (PTSD), Military Sexual Trauma (MST) and other mental health issues Veterans experience. This type of memory testing for disabled applicants is prohibited under the Americans with Disabilities Act 42 U.S.C. 12112 – Discrimination, as there is no correlation between the applicants old memories and his/her skill set and ability to perform the job applied for. See addendum.

The VA incorporated a VA wide Behavioral Base Job Interview process that was given the pseudo name “Performance Based Interview” (PBI) approximately 5 years ago. Other agencies like TSA use the pseudo name “Structured Interview” to hide the fact that they are using the Behavioral Based Interview process. Because the mentally disabled Veteran has no idea that they are taking a memory test, they cannot ask for an accommodation to be exempted from this test. This is another violation of the ADA.

How Congress can help

- Require Federal agencies to stop using pseudo names for their interview process and reveal if they are using behavioral based interviewing on the USA Jobs announcement.
- Require that job announcements using behavioral based interviews, include instructions on how mentally disabled applicants can request an accommodation.
- Require that mentally disabled applicants be processed via the Schedule A direct hire authority.

Compensated Work Therapy (CWT) Discrimination

The CWT program is clinical vocational rehabilitation program for Veterans at the VA. This is a highly successful program to get Veterans that have been out of the workforce for extended periods back to work. Veterans are placed in short term jobs in departments that mainly hire wage grade (blue collar) employees. CWT patients work in the kitchen, laundry, housekeeping, grounds to rebuild their employment skills. Many of them are hired into the VA department assigned to if a job opening occurs. There are numerous success stories about former CWT patient's impressive careers at the VA.

Unfortunately, a significant percentage of former CWT patient employees fail due to drug/alcohol relapse or unaddressed mental health issues. This causes incessant employee disciplinary action up to and including removal. The reputation of the departments that hires a large percentage of CWT patients is negatively impacted in the area of promotion outside the department.

Former CWT patients are discriminated against at the facility to the extent that there are no promotional opportunities outside their home department. Veterans who work in those departments are stereotyped as having drug/alcohol and mental health issues by other department employee and managers. It is an unwritten rule that you don't hire them unless they have a sponsor that will vouch for them to be clean/sober and/or properly medicated. Most employees don't have anyone promoting them, so they languish in low paying entry level jobs for the majority of their career.

How Congress can help

- Require the VA Central Office to develop a program to assist former CWT employees in career advancement and curtail discrimination.
- Allow former CWT employees to use sick time to attend AA, NA and mental health support group meetings held at VA Medical Centers.

Veterans in Nursing Careers

A small percentage of Registered Nurses at the VA are Veterans. These RN's are dedicated employees that support Veterans helping Veterans. Many VA Hospitals pay less than the market rate for RN's, but they don't mind the lower pay because they support the mission.

How Congress can help

- Require the VA to develop job training programs to get Veterans interested in a nursing career.
- Jobs like Nursing Assistants, LPN, and RN are in demand and many VA stations should be instructed to recruit trainees from interested Veterans.

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Addendum

AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED

SUBCHAPTER I - EMPLOYMENT [Title I]

Sec. 12112. Discrimination

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or (B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure)