

THE NATIONAL LAW REVIEW

Veteran Hiring and Veteran Preferences Gaining Steam

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This past March, Labor Secretary Thomas Perez issued a [News Release](#) announcing the overall unemployment rate for all veterans has dropped for the fourth consecutive year – this is great news.

In an effort to assist in the employment of veterans, covered federal contractors are required to set a protected veteran hiring benchmark as part of their affirmative action obligations. As we [reported earlier this week](#), OFCCP recently announced a corresponding drop in the national veteran hiring benchmark to 7% from 7.2%. The benchmark is an estimate of veterans in the civilian workforce and serves as the annual target rate for covered veteran hires to which federal contractors should strive.

Veteran Preference Policies

The groundswell of support for veteran employment also raises the topic of veteran employment preferences. The federal government and most states have long mandated government employment preferences for veterans. When challenged, these programs have been upheld as permissible pursuant to Section 712 of Title VII of the Civil Rights Act of 1964 and not found to have violated non-discrimination laws. Similarly, as OFCCP noted in its comments regarding the new VEVRAA regulations, non-veterans have no “reverse-discrimination” claim under VEVRAA or Title VII for employment decisions based on veteran status.

Currently seventeen states have authorized private employers to utilize voluntary veteran preference policies – with three coming in the first several months of 2015 alone. The list of states authorizing voluntary private employer veteran preference policies include:

Arizona, Arkansas, Florida, Idaho, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Carolina, Virginia, Washington and Utah.

While increase veteran employment is something we can all support, there is another side to this coin: the impact of veteran preferences on women. In its [1990 Policy Guidance on Veterans’ Preference Under Title VII](#), EEOC stakes out its position that veteran preferences have a significant adverse impact on women due to the historically low numbers of women in the military services. Therefore, EEOC states, preferences are typically justifiable only if authorized by federal, state or local laws as provided in Section 712 of Title VII. EEOC has not recently indicated a position on whether *voluntary* veteran preferences authorized by state law are covered by Section 712.

Consider Whether a Preference is Defensible

Consequently, private employers considering a veteran preference policy should also consider:

- Whether the state in which the employer operates has a veteran preference law for private employers. Such state laws likely protect voluntary veteran preference policies from Title VII attack. However, it remains to be seen what effect EEOC’s guidance may have and whether female plaintiffs may take issue under Title VII.



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- Without a state law , a veteran preference may not be permitted under Title VII, without a showing that it does not have an adverse impact on women.
- Finally, some state veteran preference laws impose specific requirements on employer policies, such as:
 - The policy must be in writing;
 - Preferences must be applied uniformly to hires, promotions and reductions-in-force decisions; and
 - Preferences may only be extended to veterans who are qualified or “equally qualified” as compared to competing candidates.

EEOC warns in its Guidance that a voluntary veteran preference policy which is not implemented according to the state law authorizing it, or which is not otherwise consistently applied, may create an argument that the preference is a pretext for sex discrimination.

In summary, while veteran preference policies may be laudable and attractive to many private employers, such policies should be well-informed and implemented with care.

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