

QUICK GUIDE: VETERAN PREFERENCE PROGRAM IMPLEMENTATION

Many organizations are becoming more aware of the talents and skills veterans can add to their workforce, and are interested in providing veterans with a preference in the hiring process. In 2013, North Carolina's General Assembly passed a law that allows organizations to do just that. This new law recognizes the sacrifices, dedication, and unique skills of veterans by permitting organizations to favor them for employment purposes.

Organizations choosing to take advantage of this new law must implement a veteran preference program with care to ensure that the program is consistent with the organization's policies and legal obligations regarding equal employment opportunity. While North Carolina's law expressly permits organizations to implement veteran preference programs, relevant guidance from the Equal Employment Opportunity Commission ("EEOC") states that when a veteran employment preference is voluntary and not mandated by statute, the discriminatory impact of the veteran preference (especially on women) is not shielded from scrutiny under federal law, specifically Title VII of the Civil Rights Act of 1964. Indeed, the EEOC's position is that if an applicant files a complaint about a company providing a veteran's preference, the agency will presume that the preference disparately impacts women in violation of federal law. Even though this guidance is over twenty-five years old and women are represented in much larger numbers in the military today, this remains the official position of the EEOC. So, to minimize legal risk, organizations should have a written veteran preference policy in place, ensure that the policy is consistently applied in a non-discriminatory manner, and document the hiring process when applying the policy.

Sample Policy

In appreciation of their service to our country and in recognition of their unique skills and experience, veterans will be granted preference in the company's hiring processes. This preference allows qualified veterans to receive priority employment consideration when competing with non-veteran applicants with substantially equal qualifications. In order to be eligible for a preference, veteran applicants must meet the minimum training and experience requirements of the position, must be capable of performing the duties of the position, and must successfully complete any required background and reference screening. The company is an equal opportunity employer and will effectuate its veteran preference program in accordance with all applicable laws and regulations.

North Carolina's Veteran Preference Statute

N.C. Gen. Stat. § 95-28.4: "A private, nonpublic employer in the State may provide a preference to a veteran for employment. Spouses of honorably discharged veterans who have a service-connected permanent and total disability also may be preferred for employment. Granting of this preference is not a violation of any State or local equal employment opportunity law."

Veteran Recruiting Resources

North Carolina for Military Employment ("NC4ME") is North Carolina's public-private partnership connecting organizations with qualified military talent. It brings North Carolina's workforce offices, military installations, and veteran service organizations together to enable employers of all industries to find, assess, and hire qualified talent. Organizations interested in connecting with military talent should visit www.NC4ME.org. An additional resource that organizations may find helpful to connect with military talent is the North Carolina Division of Workforce Solutions' website, which can be found at <https://www.ncworks.gov/vosnet/Default.aspx?plang=E>.

This handout is intended to provide general information about significant legal developments and should not be construed as legal advice regarding any specific facts and circumstances, nor should it be construed as an advertisement for legal services.

STEP BY STEP GUIDE

North Carolina's veteran preference law does not provide any procedures as to how a veteran preference should be applied. So, businesses have some latitude in implementing a veteran preference program that fits their organization. Flip this page for a step-by-step guide that provides an example as to how organizations can implement a veteran preference program. These steps assume a relatively typical hiring process, and serves as an example that organizations may find useful. In practice, organizations can choose to apply the veteran preference at each step in the hiring process, or as is the case in the example provided below, organizations may choose to apply the preference at only one stage. Because of the EEOC's position, obtaining legal counsel for designing, implementing, and documenting the preference is advisable.

Step 1: Announce the Position

- List clearly both minimum qualifications and preferred qualifications so that the organization can more easily determine whether candidates (both veteran and non-veteran) can successfully perform the duties of the position.

Step 2: Find Veteran Applicants

- There are numerous online resources available to help organizations connect their career opportunities to job-seeking veterans. (A list of resources is provided in Section III.)

Step 3: Review the Applications and Select Qualified Candidates

- Identify all applicants who appear to meet the minimum qualifications of the position and remove from consideration any applicants who do not meet the minimum qualifications.

Step 4: Apply the Preference

- **Scored Selection Process:** Organizations using a scored selection process should award veteran candidates additional points at an amount deemed appropriate by the organization at the end of the scoring process. For example, using a ten point scale, a veteran candidate who receives a score of seven could receive an additional one or two points to provide him with a final score of eight or nine.
- **Non-Scored Selection Process:** Organizations using a non-scored selection process can create their own methodology that gives special consideration to candidates. The special consideration should provide veteran candidates with a certain "boost" or preference in the hiring process. For example, businesses can categorize, rank, or rate applicants and then consider whether "boost" or preference would move the veteran up into the next category, rank, or rating.
- **The Importance of Documentation at this Step:** Whenever an organization applies a veteran preference—whether it be at this step, another step, or at every step—it is vital to consistently document the rationale for any decisions to show that they were based on legitimate, non-discriminatory reasons, if ever challenged.

Step 5: Advancement

- Determine which applicants will advance to the interview stage after the preference has been applied, and advance any veteran whose score is at least equal to that of other candidates being advanced.

Step 6: Interviews

- Conduct interviews as the organization normally would, but inquire about and consider any transferable military education and skills veteran candidates may possess.
- When asking a veteran about prior military service, it is recommended that organizations do not inquire about whether the veteran was honorably or dishonorably discharged. While this inquiry is not per se illegal, the EEOC takes the position that basing hiring decisions solely on military discharge status violates Title VII because discharge status has been found to adversely affect African-Americans.

Step 7: Make the Final Selection

- The organization should offer the position to a veteran if the veteran's score, rank, rating, or other qualitative assessment, with preference, is equal to or higher than the results for a non-veteran applicant. If the veteran, after the preference has been applied and interviews have been conducted with a focus on transferable military skills, is not at the same relative level as other candidates who were interviewed, the veteran should not receive the job.