



## HIRING PROTECTION BESTS PRACTICES

**SUBJECT:** Private sector employers attempting to establish preferred veteran hiring practices may be risking claims of discrimination. States can protect these employers by enacting language that offers the option to incorporate a veterans' hiring preference policy.

### PRINCIPLES:

- The statute can authorize, without mandating, a private sector employer to establish a veterans' preference process for honorably discharged veterans;
- The veterans' preference processes authorized in state statute are not subject to EEOC challenge under the Title VII exception<sup>1</sup>:
  - "Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans."<sup>2</sup>
  - The language requires that an employer applies the preference policy uniformly to employment decisions regarding hiring and promotion.

### BEST PRACTICE EXAMPLE:

- Section from FL HB 7015 2014<sup>3</sup>:

*"F.S. 295.188 Preference in hiring veterans for private employers.-*

*(1) The Legislature intends to establish a permissive preference in private employment for certain veterans.*

*(2) A private employer may adopt an employment policy that gives preference in hiring to an honorably discharged veteran, as defined in s. 1.01(14); the spouse of a veteran with a service-connected disability, as described in s. 295.07(1)(b); the unremarried widow or widower of a veteran who died of a service-connected disability, as described in s. 295.07(1)(d); or the unremarried widow or widower of a member of the United States Armed Forces who died in the line of duty under combat-related conditions. Such policy shall be applied uniformly to employment decisions regarding hiring and promotion.*

*(3) These preferences are not considered violations of any state or local equal employment opportunity law."*

### DISCUSSION:

- The language in the third paragraph emphasizes protecting the employer's right to hire, rather than mandating the employer must hire a veteran.
- Although a private sector employer may currently establish a voluntary veterans' preference process, many are hesitant to do so out of fear of being sued under Title VII of the Civil Rights Act.
  - Because veterans are overwhelmingly male, the EEOC has interpreted many veterans' preference processes to have a disparate impact on women. For example, Florida has

<sup>1</sup> U.S. Equal Employment Opportunity Commission, *Policy Guidance on Veterans' Preference Under Title VII*, Notice N-915.06.

<sup>2</sup> 42 U.S.C. § 2000e-11 (1982).

<sup>3</sup> [Online Sunshine, Florida Legislature, 2014 Florida Statutes Title XX, CH 295, www.leg.state.fl.us/Statutes/](http://www.leg.state.fl.us/Statutes/)

roughly 1.5M veterans. Of the total number, roughly 1,354,000 are men and roughly 166,000 are women.

- Section 11 of Title VII of the Civil Rights Act contains an exemption for veterans' preference processes that are authorized by state statute. To date, 12 states-Arkansas (Ark. Code Ann. § 11-15-103), Florida (HB 7015 2014: F.S. 295.188), Idaho (SB 1316), Iowa (SB 303), Maine (LD 1832/Chap. 576), Massachusetts (MA SB 1878 ), Minnesota, North Dakota (ND ST 37-19.1-05), Oregon (HB 4023),South Carolina, (HB 4922), Virginia (SB 516) and Washington (WA HB1432)-allow private employers to voluntarily give preference to veterans when making hiring decisions.
- Research by the Florida Department of Veterans Affairs suggests that when states authorize private employers to avail themselves of the Section 11 exemption, the disparate impact cause of action is taken off the table. However, the private employer's veterans' preference policy must be neutral in its application, and not a pretext for discrimination.
- While Florida has been mentioned above, the legislation enacted by the other states listed above cover the same protections with respect to hiring veterans. Additionally, Florida, Minnesota, North Dakota, and Washington are among the growing number of states that are including surviving spouses in their protection policies.