

Helping Injured Vets Transition to the Workplace

11/22/2010

By Debra Friedman

Question: What do employers need to know about accommodating veterans in the civilian workplace?

Answer: Some veterans seeking civilian employment will enter the workplace with traumatic brain injuries (TBI) and/or post-traumatic stress disorder (PTSD), conditions that are often misunderstood. To avoid missteps, employers should learn as much as they can and be aware of their legal obligations.

A TBI is caused by a penetrating injury, blow or jolt to the head. Some TBIs are mild and of short duration; others are more severe and might have long-lasting effects. The RAND Corp. estimates that 19 percent of veterans of the Iraq and/or Afghanistan wars have suffered a TBI. Symptoms vary but commonly include fatigue, sleep disturbances, dizziness, balance problems, sensitivity to bright light, headaches, memory problems, irritability and poor concentration.

PTSD is a mental disorder that occurs after an individual experiences or witnesses an extremely traumatic or life-threatening event that leads to intense fear or helplessness. The onset of PTSD might be immediate, or it can present itself weeks, months or even years after an event. According to the U.S. Department of Veterans Affairs, between 11 percent and 20 percent of veterans of the Iraq and Afghanistan wars experience PTSD. Symptoms can include poor concentration, a hyper-alertness to real or perceived dangers, a feeling of being on edge, depression, irritability and difficulty falling or staying asleep.

Sometimes these conditions go undiagnosed. Therefore, when veterans seek employment or re-employment, employers need to be prepared to address challenges they might face in the workplace.

Federal Laws Protecting Veterans

Three major federal laws protect veterans in the workplace:

- The Uniformed Services Employment and Reemployment Rights Act (USERRA) covers all employers, regardless of size. USERRA prohibits discrimination against individuals based on their military status and obligations and provides certain re-employment rights for those who leave their jobs to serve in the uniformed services, as well as obligations to train, retrain and otherwise accommodate veterans returning to the workforce, including those who have a TBI or PTSD.
- The Americans with Disabilities Act (ADA) covers employers with 15 or more employees and prohibits employment discrimination against qualified individuals based on disability, perceived disability or a history of a disability. Covered employers must provide reasonable accommodations to qualified individuals with a disability, which might include those with a TBI or PTSD, if the accommodations would allow the individual to perform the essential functions of the job in question.

- The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) requires federal contractors with at least one federal contract of \$100,000 or more to take certain actions to employ and advance veterans. For instance, federal contractors must notify appropriate employment providers of most of the contractors' available jobs, and the employment provider must give priority referrals to veterans. Federal contractors covered by this statute must give veterans who have been offered employment the opportunity to self-identify as a member of one of several categories of veterans and must report this data on an annual basis to the U.S. Department of Labor.

Do's and Don'ts

If an employment inquiry is inappropriate for a nonveteran applicant, then generally it is inappropriate for a veteran applicant. For example, while an employer can ask an applicant if she can perform the essential functions of the job with or without accommodations, it is unlawful for an employer to ask an applicant for medical information. Similarly, an employer cannot ask a veteran returning from a combat zone if he has a TBI, a PTSD or any other medical condition.

Furthermore, an employer cannot require a veteran applicant or employee to undergo a medical exam unless it requires medical exams for others under the same circumstances and the medical exam is job-related and consistent with business necessity. Therefore, if an employer believes that a veteran employee with a disclosed diagnosis of PTSD is exhibiting workplace behavior that puts the employee's or others' safety at risk, the employer can require a medical exam only if the employer would do the same for anyone else exhibiting similar behaviors. However, an employer cannot require a medical exam of a veteran simply because the employer is concerned that any individual with PTSD might exhibit violent behavior.

Additionally, employers cannot treat veterans with a TBI or PTSD differently than others when performance issues arise. For example, if an employer observes sub-par work performance, the employer can take corrective action against the employee, whether or not the employee is a veteran or has a TBI or PTSD. However, if a veteran discloses that TBI or PTSD symptoms are interfering with performance, the employer must explore reasonable accommodations before disciplining the employee.

Employers can terminate the employment of veterans for any legitimate nondiscriminatory reason as long as they treat veterans the same as other employees.

Potential Accommodations

Some veterans with a TBI or PTSD will require an accommodation. If a veteran's medical condition meets the requirements of the ADA, the employer must engage in an interactive process with the employee to determine what can be done to help them perform the essential functions of the job. Even if the veteran's condition is not an ADA-covered disability, the employer might be required under USERRA to provide training or retraining if it would help the employee perform the job. If a veteran does not disclose the TBI or PTSD and the employer is not otherwise aware of it, there is no legal obligation to offer an accommodation.

Employers should ask the veteran what accommodations they believe will help. Involving the veteran in the accommodation process is critical. However, employers need not implement a veteran's suggestion for an accommodation if doing so would cause an undue hardship to the employer and if other options are available.

Those with a TBI might request a work environment with low levels of noise and light, regular breaks, access to handicapped parking and guardrails, additional time to learn tasks, time

management devices and tasks without much variation, among other accommodations.

Employees with PTSD might request written and verbal instructions, the ability to take breaks as needed, schedule reminders and white noise machines to reduce potential distractions.

In all instances, employers must make individualized assessments of appropriate accommodations rather than assuming that all veterans with a TBI or PTSD have the same needs.

Employer Resources

There are many resources available to assist employers in how to transition veterans into the civilian workforce while avoiding legal pitfalls. Some of the resources include:

U.S. Department of Veterans Affairs Vocational Rehabilitation and Employment web site:
www.vetsuccess.gov.

The Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury:
www.dcoe.health.mil.

America's Heroes at Work, a U.S. Department of Labor project to help veterans with a TBI or PTSD: www.americasheroesatwork.gov.

Job Accommodation Network (JAN): www.askjan.org.

The U.S. Equal Employment Opportunity Commission's Guide for Employers on Veterans with Service-Connected Disabilities and the Americans with Disabilities Act (ADA):
www.eeoc.gov/facts/veterans-disabilities-employers.html

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