Veterans with Disabilities as People with Disabilities

Mid-Atlantic ADA Update 2017
ABOUT PARALYZED VETERANS OF AMERICA

- Founded in 1946 by a band of service members who came home from World War II with spinal cord injuries.
- Focused on quality health care, research and education, benefits, and civil rights that maximize the independence of our members.
- Located throughout the country to serve veterans with spinal cord injury or disease and their families.
HOW MANY VETERANS LIVE WITH DISABILITIES?

- 5.5 million veterans with disabilities (total)
- 4.4 million with Department of Veterans Affairs (VA) service-connected disabilities
- Nearly 570,000 veterans with 100% disability ratings from VA.
WHO IS A VETERAN?

- Title 38 defines a veteran as “a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”

- Eligibility for certain VA benefits may include additional requirements such as length and time of service.
WHO DOES VA SERVE AND WHAT SERVICES AND BENEFITS DO THEY PROVIDE?

- VA provides services and benefits to veterans, their dependents and survivors.
- Benefits and services provided include health care; monetary benefits, including disability compensation and pension; vocational rehabilitation services; education benefits; and burial benefits.
HOW DOES VA DETERMINE WHETHER A DISABILITY IS SERVICE-CONNECTED?

- In order for VA to determine that a disability is service-connected, the veteran must have a current disability with which there is a medical nexus to an incident that occurred in service.

- If VA determines that a disability is related to military service, then VA uses the Veterans Affairs Schedule for Rating Disabilities to evaluate the severity of the disability.

- The degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.
WHAT ARE CURRENT DISABILITY RATINGS AND HOW DO THEY RELATE TO BENEFITS?

- In general, veterans receive VA disability ratings from 0% to 100% with no payments for a 0% service-connected disability. For the most severe disabilities, additional compensation rates are provided as statutory awards authorized by 38 U.S.C. 1114 subsection (k) through (r)(2), also known as special monthly compensation.

- Benefits are provided to veterans depending on their percentage ratings with the highest level of additional benefits being available to veterans with ratings at 100%.
WHAT BENEFITS MAY NON-SERVICE-CONNECTED VETERANS BE ELIGIBLE TO RECEIVE?

- Low income veterans with a disability not related to military service may be eligible for a VA pension (slightly higher than SSI). Pension veterans are eligible for health care under Priority Group 5 and may be eligible for aid and attendance.

- If the disability is deemed “catastrophic,” then the veteran would be eligible for health care under Priority Group 4.

- Non-service connected disabled veterans may be eligible for small home modification grants and hand controls for autos.
AMERICANS WITH DISABILITIES ACT (ADA)
The ADA defines a disability as an impairment that substantially limits one or more major life activities.

Impairments can be physiological or psychological.
WHAT ARE EXAMPLES OF COMBAT INJURIES THAT ARE NEARLY ALWAYS DISABILITIES?

- Amputations
  - 1,713 OEF (Afghanistan)/OIF (Iraq) amputees
- Post-Traumatic Stress Disorder (PTSD)
  - Nearly 920,000 veterans receive VA disability compensation for PTSD
HOW DO WE DEFINE DISABILITY FOR VETERANS?

- The VA’s definition of disability is not the same as the ADA’s definition.
- A veteran may have a disability that is not related to his or her military service that qualifies as a disability under the ADA.
- A veteran may also have a VA service-connected disability that is not a disability under the ADA.
HOW DO VETERANS WITH DISABILITIES VIEW DISCLOSURE OF A DISABILITY TO AN EMPLOYER?

- Signature injuries for the post-9/11 generation include PTSD and Traumatic Brain Injury (TBI).
- Generally, veterans with disabilities are uncertain about whether they must disclose a disability to an employer.
- Even veterans without disabilities are sometimes regarded as having a disability if they served in combat.
WHAT DO VETERANS NEED TO KNOW ABOUT ADA EMPLOYMENT PROTECTIONS?

- The ADA prohibits employers from discriminating based on a disability.
- Employers must provide reasonable accommodations for applicants and employees with disabilities.
- Applicants and employees have protections in the types of medical information employers can obtain and the types of medical exams they can require.
WHAT DO VETERANS NEED TO KNOW ABOUT ACCESS TO TRANSPORTATION?

- The ADA prohibits discrimination against individuals with disabilities in public transportation services.
- Public transit agencies that provide fixed-route services must also provide paratransit services for passengers with disabilities.
- Private transportation providers such as over-the-road bus and airport shuttle companies must also provide accessible service to people with disabilities.
What do veterans need to know about access for service animals?

- The Department of Justice’s (DOJ) ADA regulations define a service animal as a dog that has been individually trained to do work or perform tasks for an individual with a disability.

- Unlike DOJ, the Department of Transportation’s (DOT) ADA regulations for transit providers allow access for other species of service animals beyond dogs.

- Employers may allow access for a service animal as a reasonable accommodation.
ACCESS TO HOUSING & VETERANS WITH DISABILITIES
HOW DOES THE FAIR HOUSING ACT (FHA) APPLY TO VETERANS WITH DISABILITIES?

- Fair Housing Accessibility Guidelines
- Reasonable Modifications
HOW DOES THE FHA APPLY TO VETERANS WITH DISABILITIES?

Service animal policies apply to:
- Guide dogs
- Hearing assistance dogs
- Emotional support animals
HOW DOES THE FHA APPLY TO VETERANS WITH DISABILITIES?

- Prohibitions in the sale and rental of housing
- Refusals to rent or sell housing
- Refusals to negotiate for housing
- Making housing unavailable
- Setting different terms, conditions or privileges for sale or rental of a dwelling
- Providing different housing services or facilities
- Falsely denying that housing is available for inspection, sale, or rental
- Denying access to or membership in a facility or service related to the sale or rental of housing
WHAT VA RESOURCES ARE AVAILABLE TO HELP VETERANS WITH SERVICE-CONNECTED DISABILITIES WITH HOUSING ADAPTATIONS?

- **Specially Adapted Housing Grant**
  - Assists veterans in modifying or building a home owned by the veteran
  - Eligibility depends on the nature of the veteran's disability
  - Three time use maximum up to the maximum grant amount

- **Special Housing Adaptation Grant**
  - Assists veterans who are blind, have loss or loss of use of both hands, severe burns, or impacts of respiratory injury.
  - May be used to adapt a veteran’s or family member’s existing home, adapt a home being purchased, or to help a veteran or family member purchase a home already adapted.
  - Three time use maximum up to the maximum grant amount

- **Temporary Residence Adaptation Grant**
WHAT VA RESOURCES ARE AVAILABLE TO HELP VETERANS WITH DISABILITIES WHETHER SERVICE-CONNECTED OR NOT WITH HOUSING MODIFICATIONS?

- Home Improvements and Structural Alterations Grant (HISA) may be used by both service-connected ($6800) and non-service connected ($2000) veterans.
- The HISA grant can be used in conjunction with the Specially Adapted Housing Grant and the Special Housing Adaptation Grant.
- A medical determination is needed from a doctor.
- Uses include building accessible entrances, improving bathroom or kitchen access, installing handrails, lowering electrical outlets and switches, improving paths or driveways, and improving plumbing/electrical work for dialysis patients.
ACCESS TO AIR TRAVEL
WHAT IS THE AIR CARRIER ACCESS ACT (ACAA)?

- Prohibits disability-based discrimination in air travel.
- Provides protections including:
  - Opportunity to preboard if need additional time or assistance in boarding.
  - Timely assistance in boarding and deplaning from trained air carrier and contract personnel.
  - No charge for a passenger with a disability to store an assistive device, including a bag containing only medication and medical supplies.
  - Seating accommodation needed due to a disability without additional cost in passenger’s class of service.
WHAT ARE PROBLEMS ENCOUNTERED IN AIR TRAVEL?

- Broken assistive devices.
- Delays in receiving assistance.
- Training deficiencies.
- Difficulty in receiving seating accommodations.
- Lack of accommodation of service animals.
- Inaccessible aircraft and features.
HOW CAN COMPLAINTS BE RESOLVED?

- Passengers with disability-related complaints may work directly with the air carrier.
- Disability-related complaints may also be filed with DOT.
- File a lawsuit under state law.
  - No guaranteed private right of action under the ACAA.
VETERANS WITH DISABILITIES RETURNING TO WORK
WHAT RESOURCES ARE AVAILABLE TO HELP VETERANS WITH DISABILITIES RETURN TO WORK?

- Service-Connected Veterans:
  - VA Vocational Rehabilitation and Employment Program
  - Assistance from Disabled Veterans Outreach Program Specialists and Local Veterans’ Employment Representatives

- VA Education Benefits
- Priority Access at American Job Centers
- Hiring Preferences
ARE THERE HIRING PREFERENCES FOR VETERANS WITH DISABILITIES?

- Employers may voluntarily give preference to veterans with disabilities.
- The federal government provides preference to veterans with service-connected disabilities.
- Certain federal contractors have affirmative action requirements related to veterans with disabilities.
WHAT ARE VEVRAA AND SECTION 503?

- **VEVRAA** (Vietnam Era Veterans Readjustment Assistance Act) — covers protected veterans — contracts of $100,000 plus non-discrimination and affirmative action plan.
  - Service-disabled — 30% plus; or 10-20% with serious employment disability.
- **Section 503** — people with disabilities — contracts of $10,000 plus non-discrimination; $50,000 plus for affirmative action plan.
- Of 5.78 million in labor force with a disability — 14.21% or 822,000 are veterans.
WHAT IS USERRA?

- Has requirements for reemploying veterans who have service-connected and non-service-connected disabilities.
- Enforced by the Department of Labor and DOJ.
- Includes stronger accommodation provisions than the ADA with the obligation to retrain a returning employee, if needed, due to a disability.
ADDITIONAL RESOURCES
WHERE CAN I GET MORE INFORMATION?

- VA Benefits and Services:
  - Vets.gov (VA benefits resource site)
  - VA accredited representatives and organizations: www.va.gov/ogc/apps/accreditation/index.asp
  - National Center for PTSD: www(ptsd.va.gov)
WHERE CAN I GET MORE INFORMATION?

- Employment:
  - Veterans.gov (DOL employment site for veterans)
  - VA Veterans Employment Center: www.vets.gov/employment/
  - FedsHireVets (Federal employment resources for veterans): www.fedshirevets.gov
  - VetsFirst Disabled Veterans Employment Guide: www.vetsfirst.org/veterans-employment
  - The Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964: www.eeoc.gov/policy/docs/fmlaada.html
  - The Mental Health Provider’s Role in a Client’s Request for a Reasonable Accommodation at Work: www.eeoc.gov/eeoc/publications/ada_mental_health_provider.cfm
WHERE CAN I GET MORE INFORMATION?

Employment (continued):

- OFCCP Resources for Federal Contractors—Section 503 and VEVRAA: www.dol.gov/ofccp/regs/compliance/resources.htm
- DOL Veterans Employment and Training Service: www.dol.gov/vets/
- Job Accommodation Network – excellent resources on accommodating PTSD and other conditions: www.askjan.org
WHERE CAN I GET MORE INFORMATION?

- **Housing:**
  - VA Specially Adapted and Special Housing Adaptation Grants: [http://benefits.va.gov/homeloans/adaptedhousing.asp](http://benefits.va.gov/homeloans/adaptedhousing.asp)
  - VA HIS A Grant: [www.prosthetics.va.gov/HISA2.asp](http://www.prosthetics.va.gov/HISA2.asp)
  - Homes For Our Troops: [www.hfotusa.org](http://www.hfotusa.org)
  - Rebuilding Together: [www.rebuildingtogether.org](http://www.rebuildingtogether.org)

- **Veterans Information:**
  - National Association of State Directors of Veterans Affairs (NASDVA): [www.nasdva.us](http://www.nasdva.us)
  - Directory of Veterans Service Organizations: [www.va.gov/vso](http://www.va.gov/vso)
QUESTIONS?