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U.S. DOL ETA, Bureau of Apprenticeship and Training Washington, D.C. 20210	Distribution: A-539 All Tech. Hdqtrs. A-544 All Field Techs A-547 SAC/Lab. Com.	Subject: Code: 604 Veteran's Preference in Apprenticeship (Solicitor's Opinion)
Symbols: MMW		Action:

PURPOSE: To advise the staff of the Office of the Solicitor (SOL) opinion concerning veterans' preference in apprenticeship and the legal implications of the district court decision in Bailey v. Southeastern Area Joint Apprenticeship Committee 561 F. Supp. 895 (S.D. W., Va. 1983).

BACKGROUND: The attached SOL opinion was requested to clear up some questions raised regarding equal opportunity in apprentice training (Title 29 CFR Part 30). The case in point was decided in favor of the women plaintiffs who challenged the Apprenticeship Committee's screening mechanism, particularly the veterans' status factor used in ranking eligibles for selection. In that case, the court ruled that the use of a selection method which awarded points to applicants for their prior military service, as part of their ranking for apprenticeship selection constituted sex discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII).

The attached opinion cites other Federal court cases involving veterans' preference:

. Krenzer vs. Ford, 429 F. Supp. 499 (D.D.C. 1977), 14 FEP Cases 1074, the court struck down a Veterans Administration policy restricting positions on the Board of Veterans' Appeals to veterans.

. Woody vs. City of West Miami, 477 F. Supp. 1073 (S.D. Fla, 1979), 21 FEP cases 315, a district court held that a municipal police department's veterans' preference policy not required by statute was a subterfuge for sex discrimination.

. Dozier vs. Chupka 395 F. Supp. 836 (S.D. Ohio 1975), a fire department which gave bonus points to veterans with honorable or disability discharges was found to be in violation of Title VII's prohibition against race discrimination.

. Brown vs. Puget Sound Electrical Apprenticeship and Training Trust, 732 F. 2d 726 (9th Cir. 1984), Cert. denied, 469 U.S. 1108 (1985). The analysis of the case contained in the SOL opinion is set forth below:

In its opinion, the court holds that the extension of otherwise applicable age limits for veterans who apply for apprenticeship positions does not necessarily violate Title VII if both veterans and non-veterans had effectively equal periods to apply for positions. The court reasons that under such circumstances, no adverse impact on women is presented. None –the-less, the

court goes to some length to distinguish the case from Bailey, Krenzer, Woody stating that “in each of those cases veterans were given a preference not granted equally qualified women who were non-veterans.” The court acknowledges, therefore, by implication that when adverse impact on women can be shown in the use of policies or selection standards favor veterans, Title VII is violated unless clear statutory veterans preferences are present.

Your particular attention is called to the court's discussion at page 1 of the opinion referring to "the [Federal] government's position that persons who served their country might be foreclosed from apprenticeship training because of their age." Acknowledging that the Federal agencies may have favored waivers of apprenticeship age limits for returning veterans, nevertheless the court concludes that such policies do not rise to the level of a statutory preferences falling within Section 712 of Title VII so that they would be insulated from liability. [Section 712 provides that Title VII does not prohibit special rights or preferences for veterans created under Federal, state, territorial or local law.] To us, this appears to reinforce our conclusion that apprenticeship programs which use veterans' preferences, which are not based on statutory authority run the risk of violating both Title VII and other anti-discrimination laws.

ACTION:

BAT technical staff should become informed about SOL's conclusion that apprenticeship programs, which use veteran preferences, which are not, based on statutory authority run the risk of violating both Title VII and other anti-discrimination laws. This information should be provided to program sponsors.

Attachments