



US Department of Labor

Employment Rights Participant Guide

**Off-Base Transition Training (OBTT)
Veterans' Employment & Training Services (VETS)
Transition Assistance Program (TAP)**

January 2022

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Workshop Introduction

Welcome to the Employment Rights workshop. This two-hour workshop is provided by the Department of Labor (DOL) to veterans, including those veterans currently serving in the Reserve Component (National Guard and Reserve members), and their spouses seeking to learn about their rights as an employee in the workplace.

Objectives

In this workshop, you will:

- Define rights of employees
- Describe self-advocacy and practical techniques
- Locate resources for assistance with workplace issues

Workshop Focus

Workshop Section	Section Focus
Employment Rights	What rights to employees and employers have in the workplace?
Employment Laws and Labor Rights	What laws govern and protect employees and employers?
Self-Advocacy	How can employees uphold their rights in the workplace?
Resources for Workplace Concerns	Where can employees find help resolving workplace issues?

Section 1: Employment Rights

Qualities of Veteran Employees

QUALITIES OF VETERAN EMPLOYEES

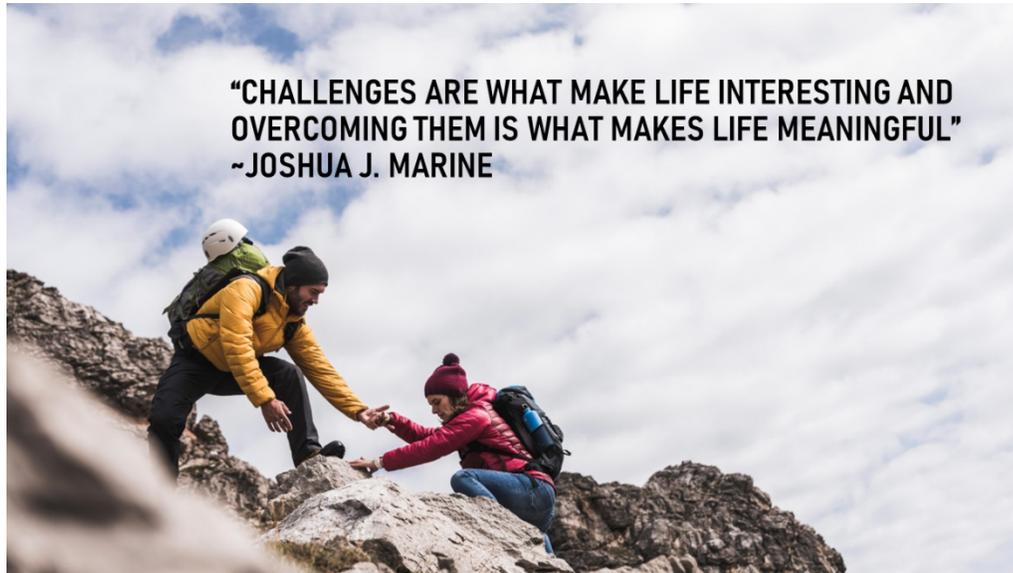
- Working well in a team
- Having a sense of duty
- Experiencing self-confidence
- Being organized and disciplined
- Possessing a strong work ethic
- Having the ability to follow through on assignments, even under difficult or stressful circumstances
- Possessing a variety of cross-functional skills
- Being able to problem solve quickly and creatively
- Being able to adapt to changing situations
- Being able to follow rules and schedules

Employers want to attract dedicated, hard-working, and purpose-driven employees. They can benefit from hiring veterans. Much of this experience can translate to their participation in the workforce making the veteran an asset on the job.

Strengths the veteran can bring to the workplace include:

- Working well in a team
- Having a sense of duty
- Experiencing self-confidence
- Being organized and disciplined
- Possessing a strong work ethic
- Having the ability to follow through on assignments, even under difficult or stressful circumstances
- Possessing a variety of cross-functional skills
- Being able to problem solve quickly and creatively
- Being able to adapt to changing situations
- Being able to follow rules and schedules

Adapting to a new job after serving in the military can be difficult. Prior service members face many challenges. Those who have been wounded or acquired illnesses because of military service often encounter additional obstacles.



In this course, you will learn about laws to help veterans in the workplace. You will also learn which laws apply to you. You will get tips on advocating for yourself at work, and you will learn about the resources available to you should you encounter a problem in the workplace.

“Challenges are what make life interesting and overcoming them is what makes life meaningful.”

Joshua J. Marine, author, and lecturer

Your Rights in the Workplace

YOUR RIGHTS IN THE WORKPLACE

Employment laws

- Support a fair and safe working environment
- Create regulations related to wages, hours worked, safety and health standards, and anti-discrimination policies
- Are administered and enforced by the Department of Labor



As a job seeker or employee, you should be familiar with your employment rights and protections. You also should know who to contact for assistance with workplace issues.

Employment laws are designed to create a fair and safe working environment for employees and employers. Regulations cover categories such as wages, hours worked, safety and health standards, and anti-discrimination policies.

The U.S. Department of Labor (DOL) administers and enforces more than 180 federal laws. These mandates and regulations cover many workplace activities for about 150 million workers and 10 million workplaces.

Considering that you might spend 40 or more hours per week at work, knowledge about your employment rights helps you determine if you are being treated equally or fairly compared to your co-workers.

Employment rights protect applicants, or candidates, and employees. Laws and regulations in each of these situations is applied differently.

Job Applicant Rights

JOB APPLICANT RIGHTS

Applicants have rights in the workplace before an employer even makes a job offer.

Those rights are mostly centered on the information employers may require from potential employees.



When you apply for a job, you may complete an application, submit a resume, provide references, and interview for the position.

During the interview, employers will ask questions about your qualifications. They will discuss job specifications, which are the qualifications, skills, and personality traits a person needs to do the job. Several questions often asked in interviews are illegal. Any questions intended to have you reveal your age, race, national origin, gender, religion, marital status, and sexual orientation are off-limits.

Illegal Questions

ILLEGAL QUESTIONS

- Are you married?
- What religious holidays do you observe?
- Do you have children?
- What country are you from?
- Is English your first language?
- Do you socially drink?
- How long have you been working?
- What type of discharge did you receive in the military?
- Do you have outstanding debt?
- Have you been arrested?

Review the questions and explanations in the table to prepare for conversations with potential employers.

Illegal or Inappropriate Question	Explanation
Are you married?	This question is illegal because your answer reveals your marital status and may reveal your sexual orientation.
What religious holidays do you observe?	Although this specific question is illegal, interviewers may ask if you're available to work on Saturday or Sunday.
Do you have children?	Interviewers cannot ask about children, but they can ask questions to learn if you have responsibilities that will interfere with specific job requirements such as traveling.
What country are you from?	Interviewers cannot legally ask about your nation of origin, but they can ask if you're authorized to work in a certain country.
Is English your first language?	Interviewers may not ask what your first language is, but they may ask you what other languages you read, speak, or write fluently.
Do you socially drink?	This question violates the Americans with Disabilities Act of 1990. Your answer may reveal treatment for alcoholism, which can be considered a disability. Under the ADA, candidates are not required to disclose a disability. Employers can ask if you use illegal drugs.
How long have you been working?	Your answer to this question may give interviewers a way to guess your age, and requesting such information is unlawful. Interviewers may ask how long you have worked in a certain industry.
What type of discharge did you receive in the military?	Interviewers cannot ask about the situation surrounding your military discharge, but they can ask what type of education, training, or work experience you received while in the military.
Have you ever been arrested?	Interviewers cannot legally ask you about your arrest record, but they can ask if you've ever been convicted of a crime.
Do you have outstanding debt?	Interviewers must have permission before asking about your credit history. They are not allowed to ask how you manage your personal finances or ask about properties you own. Some job applications give permission for potential employers to complete background or credit checks.

If an interviewer asks you an illegal or inappropriate question, you may decline to answer.



After the Job Offer

RIGHTS AFTER A JOB OFFER IS MADE

After making an offer, an employer can

- Ask about your general physical and mental health
- Require a medical examination
- Review your credit report (with your permission)

A photograph of a woman in an orange long-sleeved shirt shaking hands with a man in a blue suit. They are standing in an office setting with a window in the background.

After making a job offer, however, an employer may ask about your general physical and mental health. These questions may include questions about a disability. The employer may also require a medical examination as a condition of employment.

As long as **all applicants** for the same type of job are asked the same questions and are required to take the same examination, these actions are legal.

Scenario – Sharing Information in an Interview



Consider Victoria, an applicant with profound hearing loss in one ear. In an interview, the employer may ask Victoria if she can respond quickly to instructions in a noisy, fast-paced work environment. The employer can also ask her if she can meet legally mandated safety standards required to perform the job.

The employer cannot ask if Victoria has a hearing impairment, uses a hearing aid, or receives treatment related to her hearing loss.

After making a job offer, an employer may ask Victoria questions about her health, including questions about her hearing loss. The employer may require a medical examination to determine Victoria's ability to perform the job safely. However, the employer may not withdraw the job offer if Victoria is able to perform the essential functions of a job.

Employee Rights

EMPLOYEE RIGHTS	
<p>The EEOC gives all employees a right to:</p> <ul style="list-style-type: none">• Not be treated less favorably because of race, color, religion, sex (including pregnancy), national origin, disability, age (40 or older) or genetic information• Receive equal pay for equal work	
<ul style="list-style-type: none">• Receive reasonable accommodations for medical condition or religious beliefs, if required by law• Expect any medical information or genetic information shared with an employer will be kept confidential• Report discrimination, participate in a discrimination investigation or lawsuit, or oppose discrimination (for example, threaten to file a discrimination complaint), without being retaliated against (punished) for doing so.	

Federal employment discrimination laws outlined by the Equal Employment Opportunity Commission (EEOC) gives all employees a right to:

- Not be treated less favorably because of race, color, religion, sex (including pregnancy), national origin, disability, age (40 or older) or genetic information
- Receive equal pay for equal work
- Receive reasonable accommodations for medical condition or religious beliefs, if required by law
- Expect any medical information or genetic information shared with an employer will be kept confidential
- Report discrimination, participate in a discrimination investigation or lawsuit, or oppose discrimination (for example, threaten to file a discrimination complaint), without being retaliated against (punished) for doing so.

State and local laws may also impact employee rights. Search state and local government websites for additional information about these laws.

Disclosing a Disability

<h3>DISCLOSING A DISABILITY</h3> <p>Applicants and employees are not required by law to disclose a disability.</p> <p>Employers are most concerned with an employee's ability to do the job.</p>	<p>Employees or candidates may decide to disclose a disability for several reasons:</p> <ul style="list-style-type: none">• Request a reasonable accommodation to perform the job.• Request removal of a marginal function and substitution with another task• Request job restructuring such as remote work or a flexible work schedule.
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Job applicants and employees are not required by law to disclose, or talk about, a disability. Many people with hidden disabilities may feel they are not being completely honest if they do not tell everything about their disability at the time of an interview. Just remember that you are not obligated to do so.

If you choose to disclose or discuss a health condition during an interview or once you are an employee, be direct and brief. The employer's main concern is that you can do the job. Don't give more details than necessary.

Employees or candidates may decide to disclose a disability for several reasons:

- **Request a reasonable accommodation** to perform the job. A reasonable accommodation for a person in a wheelchair could be an adjustment to his desk height.
- **Request removal of a marginal function** and substitution with another task. A marginal function is a job-related task that is not essential. For example, part of Natalie's job as an elementary teacher is patrolling the halls and lunchroom during her planning period one day a week. Her chronic back pain prevents her from walking the required distance. Because this task is not essential to her job, she can do another task, such as answering the office phone, that is equal in productivity.
- **Request job restructuring** such as remote work or a flexible work schedule.

Note: An employee may request an accommodation even if she did not do so when applying for the job or after receiving the job offer. The employer must keep any disclosed information confidential.

Section 2: Employment Laws and Labor Acts

Several laws and regulations apply to businesses, job seekers, workers, retirees, and contractors. Familiarize yourself with the labor laws presented in this lesson. You may encounter some of these legal guidelines as you search for meaningful employment.

Keep in mind that some laws are for every job seeker and employee, some are for veterans only, some are focused on disabled workers and some only apply to federal workers or federal contractors.

For authoritative information and fuller descriptions on these laws, consult the statutes and regulations themselves. The information in this workshop is not legal guidance but is designed as an introduction to employment rights. For specific situations, visit the [Department of Labor](#) or applicable employment law and compliance websites identified in the resources section of this workshop. For assistance, contact your HR department, or speak to a legal representative.

Federal Laws Protecting Veterans in the Workplace

Under federal law, U.S. military veterans have special rights regarding employment. [The Veterans' Employment and Training Service](#) monitors and investigates veterans' rights. This Department of Labor agency helps veterans transition from military service to civilian life with good jobs and reliable employment opportunities. The program provides employment and training services through grants and cooperative agreements at a national level.

Employers play a key role in maintaining our nation's strong national defense by both supporting employees in the uniformed services to serve when called and ensuring veterans can put their skills and experience to work in the civilian workforce following separation.

In general, employers should treat veterans and service member employees the same as any other employees. Several federal laws offer special protections to veterans in the workplace.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

- Protects civilian job rights and benefits for eligible veterans and members of the active and Reserve components of the U.S. armed forces
- Provides protection for disabled veterans returning to a position, requiring employers to make reasonable efforts to accommodate the disability
- Provides eligible service members recovering from injuries received during service or training up to two years from the date of completion of service to return to their jobs or apply for reemployment
- Protects job rights of veterans and members of National Guard and Reserves. Benefits do not extend to spouses or family members.



If you are in the Reserve Component (National Guard or Reserve member), you have likely been introduced to the Uniformed Services Employment and Reemployment Rights Act (USERRA) during your service. USERRA is a federal law. It was passed in 1994 and protects military service members and veterans from employment discrimination based on their service. It allows them to regain their civilian jobs following a period of uniformed service.

USERRA:

- Protects civilian job rights and benefits for veterans and members of the active and Reserve components of the U.S. armed forces
- Provides protection for disabled veterans returning to a position, requiring employers to make reasonable efforts to accommodate the disability
- Provides eligible service members recovering from injuries received during service or training up to two years from the date of completion of service to return to their jobs or apply for reemployment
- Benefits do not extend to spouses or family members.

Note: Protections under USERRA apply only to reemployment situations.

USERRA applies to ALL employers, regardless of size. The oversight agencies are:

- U.S. Department of Labor (DOL) Veterans Employment and Training Service (VETS)
- Employer Support of the Guard and Reserve (ESGR)

Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA)

VIETNAM ERA VETERANS' READJUSTMENT ASSISTANCE ACT (VEVRAA)

- Prohibits federal contractors and subcontractors from discriminating in employment against protected veterans
- Requires employers take affirmative action to recruit, hire, promote, and retain protected veterans:
 - a disabled veteran
 - a recently separated (within 3 years) veteran
 - an Armed forces service medal veteran or
 - an active-duty wartime or campaign badge veteran
- Can extend to military spouses



The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) prohibits federal contractors and subcontractors from discriminating in employment against protected veterans. It requires employers to take affirmative action to recruit, hire, promote, and retain these individuals.

A federal contractor may ask you to voluntarily self-disclose your status as a “protected veteran” during the application and hiring activities. Since federal contractors are required to conduct outreach and recruitment for veterans, they also must annually report these numbers. Any voluntary self-disclosure information must be kept private and separate from other personnel files or from the hiring committee. VEVRAA:

- Prohibits federal contractors and subcontractors from discriminating in employment against protected veterans
- Requires employers take affirmative action to recruit, hire, promote, and retain protected veterans:
 - a disabled veteran
 - a recently separated (within 3 years) veteran
 - an Armed forces service medal veteran or
 - an active-duty wartime or campaign badge veteran
- Can extend to military spouses

Employers with federal contracts or subcontracts that meet the threshold amount specified in the statute. The employer is covered under VEVRAA if the federal contract or subcontract is in the amount of \$150,000 or more.

U.S. Department of Labor Office of Federal Contract Compliance (OFCCP) provides oversight for VEVRAA.

The **Wounded Warriors Federal Leave Act of 2015** provides leave to any **new** Federal employee who is a veteran with a service-connected disability. The disability should be rated at 30 percent or more for purposes of undergoing medical treatment for such disability for which sick leave could regularly be used.

An eligible employee must submit certification from a health care provider to verify that leave is used for treatment of a service-connected disability.

This is a one-time benefit beginning on the first day of employment for a continuous 12-month eligibility period. If this leave is not used before the eligibility period expires, it is forfeited.

An eligible employee must submit certification from a health care provider to verify that leave is used for treatment of a service-connected disability: this leave may only be used for the medical treatment of a qualifying service-connected disability.

Find more information and details by visiting the Office of Personnel Management Fact Sheet, <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/disabled-veteran-leave/>

Federal Laws Protecting All Workers

Equal Employment Opportunity Commission

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The laws enforced by EEOC provide five basic rights for job applicants and employees who work in the United States:

- Work free of discrimination
- Work free of harassment
- Complain about job discrimination without punishment
- Request workplace changes for your religion or disability
- Keep your medical information private

Equal Employment Opportunity posters are a common site in employee breakrooms across the nation. Employers with 15 or more employees must display the “EEO is the Law” posting. It is an official notice describing the federal laws that prohibit employment discrimination. The poster explains the laws for each protected category. It explains how an employee or applicant can file a complaint about employment-related discrimination.

The EEOC also requires every American employer to include an EEO statement in their job postings. An EEO statement included at the bottom of job descriptions and on career pages communicates a business's stance on the equal opportunity offered to potential job candidates.

Labor laws protect you against employment discrimination when it involves:

- Unfair treatment because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information

WORK FREE OF DISCRIMINATION

Your employer cannot make job decisions because of your race, color, religion, sex (including pregnancy, sexual orientation and gender identity) national origin, disability, or genetic information.

Your employer also can't discriminate against workers who are 40 or older based on their age. This right applies to all types of job decisions, including hiring, firing, promotions, training, wages and benefits.



- Harassment by managers, co-workers, or others in your workplace, because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information

WORK FREE OF HARASSMENT

You have a right to work in an environment free of harassment based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age (age 40 or older) or genetic information.



- Denial of a reasonable workplace accommodation that you need because of your religious beliefs or disability

REQUEST WORKPLACE CHANGES FOR YOUR RELIGION OR DISABILITY

You have a right to request reasonable changes to your workplace because of your religious beliefs or medical condition.

Although your employer does not have to grant every request, it should carefully consider each request and whether it would be possible.



- Retaliation because you complained about job discrimination or assisted with a job discrimination investigation or lawsuit

COMPLAIN ABOUT JOB DISCRIMINATION WITHOUT PUNISHMENT

You have a right to complain about treatment that you believe is illegal job discrimination.

Your employer cannot punish you, treat you differently or harass you if you report job discrimination or help someone else report job discrimination, even if it turns out the conduct was not illegal.

We call this your right to be protected from retaliation.



- Medical information or other health information that you choose to share with an employer remaining confidential

KEEP YOUR MEDICAL INFORMATION PRIVATE

The laws enforced by EEOC strictly limit what an employer can ask you about your health.

In addition, you have a right to keep any genetic information and medical information you share with your employer private.

In general, your employer should not discuss your genetic information or medical information with others.

There are very limited exceptions to the confidentiality requirements in the laws enforced by EEOC.



Laws Enforced by the EEOC

<h3>LAWS ENFORCED BY THE EEOC</h3> <p>The EEOC enforces several federal laws against job discrimination and enforcement:</p> <ul style="list-style-type: none">• Title VII of the Civil Rights Act of 1964• Pregnancy Discrimination Act• Equal Pay Act of 1963• Title I of the American with Disabilities Act of 1990• Sections 501 and 505 of the Rehabilitation Act of 1973• Age Discrimination Act of 1967• Title II of the Genetic Information Nondiscrimination Act of 2008	
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Civil Rights Act of 1964 – Protects applicants and employees from discrimination in hiring, promotion, discharge, pay, benefits, job training, classification, referral, and other aspects of employment on the basis of race, color, religion, sex (including pregnancy), or national origin.

Pregnancy Discrimination Act – makes it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Equal Pay Act (EPA) of 1963 – Prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

Americans with Disabilities Act (ADA) of 1990 – Protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

Sections 501 and 505 of the Rehabilitation Act of 1973 – makes it illegal to discriminate against a person with a disability in the federal government. The law also protects you from retaliation if you complain about discrimination or participate in an EEOC proceeding (for example, a discrimination investigation or lawsuit).

Age Discrimination in Employment Act (ADEA) of 1967 – Protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, benefits, job training, classification, referral, and other aspects of employment.

Genetic Information Nondiscrimination Act (GINA) of 2008 – Protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

For more information about an employee's rights and responsibilities, visit the [Equal Employment Opportunity Commission](#) and locate **Employees & Applicants** at the bottom of the page.

Fair Labor Standards Act

FAIR LABOR STANDARDS ACT

- Defines the 40-hour work week
- Establishes the federal minimum wage
- Sets requirements for overtime
- Places restrictions on child labor
- Includes the Equal Pay Act



The Fair Labor Standards Act (FLSA) covers the number of hours employees will work in their work week, as well as overtime regulations. The FLSA was passed in 1938 and has been amended many times as it establishes the federal minimum wage and equal pay guidance. FLSA:

- Defines the 40-hour work week
- Establishes the federal minimum wage
- Sets requirements for overtime
- Places restrictions on child labor
- Includes the Equal Pay Act

Employees of covered employers are protected under FLSA. Some employees are EXEMPT from FLSA coverage. Independent contractors, sometimes referred to as 1099 workers, are not covered by FLSA. FLSA applies to employers whose annual sales total \$500K or more or who are engaged in interstate commerce.

It also does not require payment for time not worked such as vacations, sick leave, or holidays (Federal or otherwise) or require performance evaluations. These are generally agreements between you and the employer.

A note to new mothers: it is the Fair Labor Standards Act that addresses allowing a reasonable break time and space for nursing mothers.

State laws may vary on many of these topics. For state specific information, visit the www.dol.gov website and search under state labor laws.

U.S. Department of Labor (DOL) Wage and Hour Division (WHD) provides oversight for FLSA <https://www.dol.gov/agencies/whd>

Family and Medical Leave Act (FMLA)

FAMILY AND MEDICAL LEAVE ACT (FMLA)

Twelve workweeks of unpaid leave to be used for:

- The birth of a child and care for the newborn child within one year of birth
- The placement with the employee of a child for adoption or foster care and care for the newly placed child within one year of placement
- Caring for a spouse, child, or parent who has a serious health condition
- A serious health condition that makes the employee unable to perform the essential functions of his or her job
- Any qualifying need arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on **"covered active duty"**



The Family and Medical Leave Act (FMLA) of 1993 protects your job if you take leave due to a medical issue. Caregivers who need to care for a family member may also be eligible. FMLA requires group health benefits to be maintained during the leave. Employees are entitled to return to their same or an equivalent job at the end of their FMLA leave.

Note: FMLA is not paid leave, just job protection. Check with your employer to determine paid leave benefits.

The 12 workweeks of **unpaid** leave could be used for:

- The birth of a child and care for the newborn child within one year of birth
- The placement with the employee of a child for adoption or foster care and care for the newly placed child within one year of placement
- Caring for a spouse, child, or parent who has a serious health condition
- A serious health condition that makes the employee unable to perform the essential functions of his or her job
- Any qualifying need arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty"

Employees taking care of a veteran who is a spouse, son, daughter, parent, or next of kin are entitled to 26 workweeks of unpaid, job-protected leave during a single 12-month period. The veteran must have a serious injury or illness. FMLA requires group health benefits to be maintained during the leave.

To be eligible for FMLA, an employee:

- Has worked for the employer for at least 12 months (not necessarily consecutively)
- Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave
- Works at a location where the employer has at least 50 employees within 75 miles

FMLA applies to:

- Public agencies, including local, State, and Federal employers, and local education agencies (schools)
- Private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year – including joint employers and successors of covered employers

The U.S. Department of Labor (DOL) Wage and Hour Division (WHD) oversees the FMLA <https://www.dol.gov/agencies/whd/fmla>

Workplace Benefits for Caregivers

WORKPLACE BENEFITS FOR CAREGIVERS

If you are a caregiver, you can discuss with your manager or HR department available options:

- Flexible work
- Employee Assistance Program
- Counseling
- Eldercare referrals
- Paid Time Off (PTO)
 - Use accrued sick or vacation days
 - Unpaid leave under the federal Family and Medical Leave Act (FMLA)



More than one in five Americans are caregivers, having provided care to an adult or child with special needs at some time in the past 12 months. This totals an estimated 53.0 million adults in the United States, up from the estimated 43.5 million caregivers in 2015.

If you are a caregiver, you can discuss with your manager or HR department available options:

- Flexible work
- Employee Assistance Program
- Counseling
- Eldercare referrals
- Paid Time Off (PTO)
 - Use accrued sick or vacation days
 - Unpaid leave under the federal Family and Medical Leave Act (FMLA)

Use the U.S. DOL [Family and Medical Leave Act Employee Guide](#) to determine your eligibility.

Use the U.S. DOL [Fact Sheet #28M\(b\): Military Caregiver Leave for a Veteran under the Family and Medical Leave Act](#).

American with Disabilities Act (ADA)

AMERICAN WITH DISABILITIES ACT (ADA)

- Strictly limits the circumstances under which an employer may ask questions about an employee's medical condition
- Limits an employer's ability to require an employee to have a medical examination
- Protects people with disabilities defined by the law and qualified for the job they hold

A photograph showing a person in a wheelchair working in a warehouse. The person is leaning forward, possibly organizing or moving stacks of wooden pallets. The warehouse has high ceilings and industrial lighting.

According to the Bureau of Labor Statistics, in August 2020, 4.7 million veterans, or 26 percent of the total, had a service-connected disability. Individuals with disabilities are protected from employment discrimination by Title I of the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 (RA).

One of several disability-related laws, the purpose of the ADA is to ensure that people with disabilities have the same rights and opportunities as everyone else.

The Americans with Disabilities Act (ADA):

- Strictly limits the circumstances under which an employer may ask questions about an employee's medical condition
- Limits an employer's ability to require an employee to have a medical examination
- Protects people with disabilities defined by the law and qualified for the job they hold

The ADA defines a qualifying disability as a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning, or operation of a major bodily function). This definition does not apply to impairments that are transitory and minor. A transitory impairment has an actual or expected duration of 6 months or less. An individual with a disability is eligible under the ADA if he:

- Has a physical or mental impairment that substantially limits one or more major life activities
- Has a record of such an impairment
- Is regarded as having such an impairment

Note: The ADA doesn't include a list of conditions that will always qualify as disabilities. Whether a condition is a disability depends on how it affects an individual.

The EEOC provides oversight for the ADA.

For more information, review **Understanding Your Employment Rights Under the Americans with Disabilities Act (ADA): A Guide for Veterans**, <https://www.eeoc.gov/laws/guidance/understanding-your-employment-rights-under-americans-disabilities-act-guide-veterans>

If you have questions about your employment rights related to a disability, refer to the [Job Accommodation Network \(JAN\)](#) consulting services

Health Insurance Portability and Accountability Act (HIPAA)

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

- Provides rules for health care providers and health insurance companies about who can look at and receive our health information
- Generally, limits release of information to the minimum reasonably needed for the purpose of the disclosure
- Controls how a health plan, or a covered health care provider shares your protected health information with an employer
- Does not protect your employment records, even if the information in those records is health related
- Applies to all individuals and patients over the age of 18

Once you are an employee, your performance is the best measure of ability to do the job. However, after one day or three weeks on the job, you may decide to disclose a disability or request an accommodation.

What is your plan of action?

REASONS FOR DISCLOSURE

- To supervisors and managers, if necessary, to provide a reasonable accommodation or meet an employee's work restrictions
- To first aid and safety personnel if an employee need emergency treatment or require other assistance at work
- To individuals investigating compliance with the ADA and similar state and local laws.
- Where needed for workers' compensation or insurance purposes (for example, to process a claim)



For example, if you have Epilepsy or a type of seizure disorder, your plan of action may include disclosing to your co-workers your emergency contact information, visual or audible warning signs, or how and when to call 9-1-1.

What if you don't want to disclose your disability, but have numerous doctor appointments? What is your plan of action? What do you need to know? Most of us feel that our health information is private and should be protected.

A federal law sets rules for health care providers and health insurance companies about who can look at and receive our health information. This law, called the Health Insurance Portability and Accountability Act of 1996 (HIPAA), gives you rights over your health information, including the right to get a copy of your information, make sure it is correct, and know who has seen it. Information about your health cannot be shared without your permission. HIPAA:

- Provides rules for health care providers and health insurance companies about who can look at and receive our health information
- Generally, limits release of information to the minimum reasonably needed for the purpose of the disclosure.
- Controls how a health plan, or a covered health care provider shares your protected health information with an employer.
- Does not protect your employment records, even if the information in those records is health related.
- Applies to all individuals and patients over the age of 18.

Covered entities include health plans, most health care providers and health care clearinghouses. Business associates of covered entities must follow parts of HIPAA regulations. U.S. Department of Health and Human Services (HHS) provides oversight for HIPAA.

Under the following circumstances, an employer may disclose medical information:

- To supervisors and managers, if necessary, to provide a reasonable accommodation or meet an employee's work restrictions
- To first aid and safety personnel if an employee needs emergency treatment or require other assistance at work
- To individuals investigating compliance with the ADA and similar state and local laws.
- Where needed for workers' compensation or insurance purposes (for example, to process a claim)

If an injury is job related or the absence is lengthy, there could be a request for medical information or diagnosis to participate in programs such as, Workers' Compensation Program, Family and Medical Leave Act (FMLA), etc.

Each company has its own sick leave policies. Know your company's policy. If your company provides an employee handbook, search for references to the company's sick leave policy. If you cannot find any references or the company does not provide employee handbooks, contact the Human Resources (HR) department.

If the employer maintains a leave policy requiring **all** employees who use sick leave for an absence due to a medical issue to submit a doctor's note, the employer can require an employee to submit one. A doctor's note is typically provided only to verify the dates of illness or injury. The note should not include any information beyond that which is needed to verify the proper use of sick leave.

Who Are You Going to Call? Activity



Read the brief scenario below and determine which agency can provide guidance. The scenario may relate to multiple regulations or agencies.

1. A veteran who considers themselves to be disabled asks an employer for a reasonable accommodation due to a medical condition. The employer denies the request. Who would be the best agency or resource to assist?
2. A service-connected disabled veteran is searching for employment and realizes his injury or illness will impact his work life. He was previously a diesel mechanic but can no longer work as a mechanic due to back issues. He will be starting an apprenticeship and learning a new profession in information technology. What agency or resource can help him determine what job accommodations, if any, he might need?
3. A parent of an injured military member needs to take some unpaid leave to care for their service member son during injury rehabilitation. What program should they ask about with their human resources department at their present employer?

Section 3: Self-Advocacy

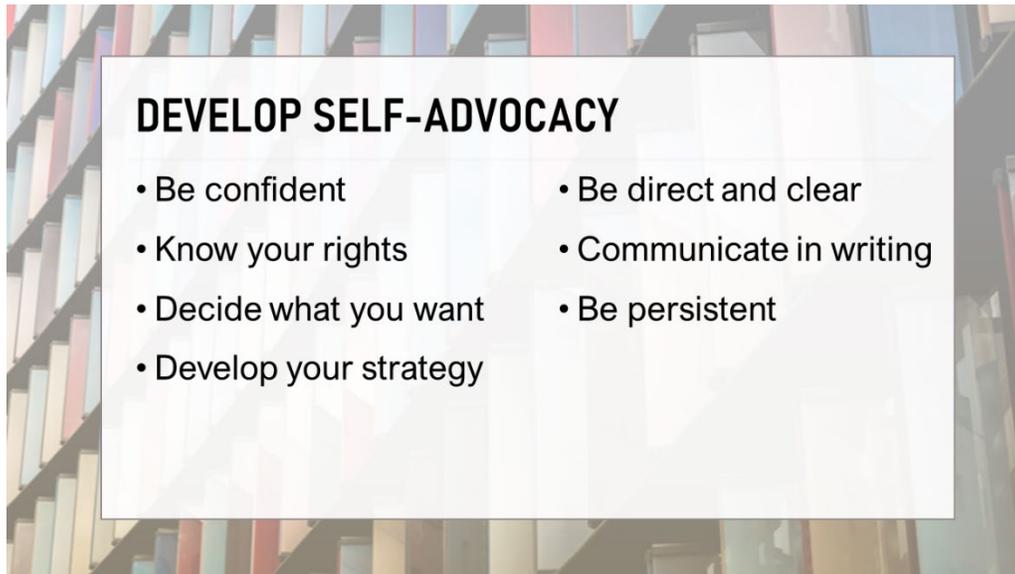
What happens if you believe your rights in the workplace have not been respected? Self-advocacy is the ability to tell people what you need and why you need it. Self-advocacy is a skill that will open the door to transformational conversations, build self-confidence and enable career opportunities. You can advocate for yourself before or during an interview, and after starting a job. You will gain self-respect and the respect of others by being your own advocate.



Speaking up for yourself:

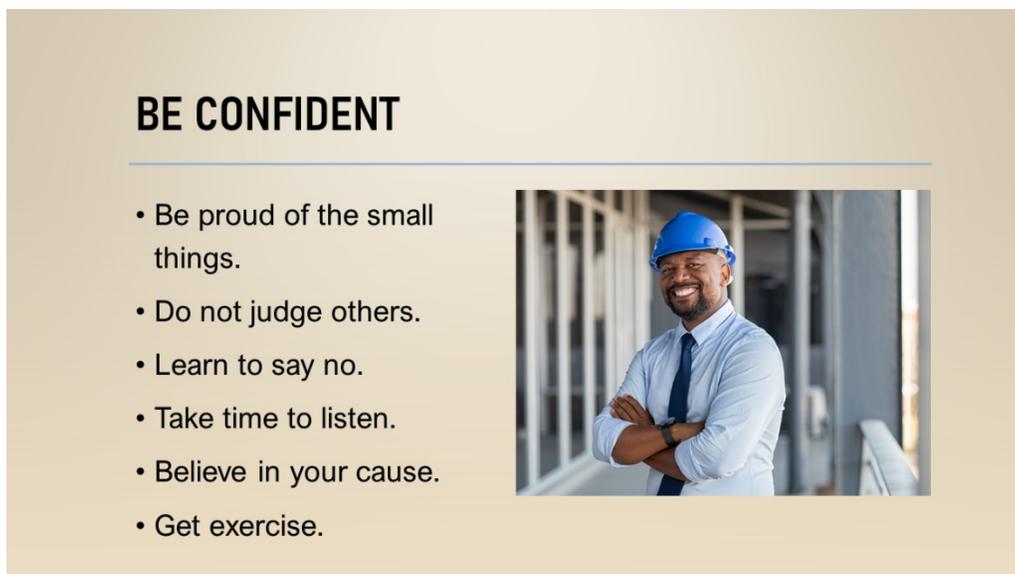
- Involves problem-solving skills
- Raises awareness of the problems you face
- Helps people understand your point of view
- Can benefit your career
- Can affect your future

Develop Self-Advocacy



Being an advocate for yourself may not come naturally to everyone. Review the strategies listed below to learn what you can do to improve your self-advocacy.

Be confident. You will be a better self-advocate when you believe in yourself and know you are worthy of respect. You can build your confidence with several small practices—taking pride in small things, resisting judgement, learning to say no, carefully listening, believing in your cause, and getting exercise



Know your rights. You have the same rights as all workers, job seekers and employees. Ensure that your request is in line with current legislation. You may be able to find others with similar circumstances who can share outcomes. As a returning service member, you should not hesitate to ask questions if you're not sure about how a particular law operates or how it is enforced. Many of the laws affecting returning service members can be somewhat confusing. Seek help from the relevant agency if you are unsure of how a law or regulation affects you.

KNOW YOUR RIGHTS

- Review current legislation.
- Seek out others with similar situations.
- Ask questions about your concern.
- Contact the relevant agency.



Decide what you want. Deciding is a key step in taking any action. You should have a clear idea of what you are asking for from your employer. You do not have to settle for less than what you need.

DECIDE WHAT YOU WANT

- Know what you need before approaching someone with a request.
- Do not settle for less than what you need.



Develop your strategy. Have a plan of action. Determine who is best to speak to, what points to raise, and when is the best time to discuss your needs.

DEVELOP YOUR STRATEGY

Determine

- Who is best to speak to
- What points to raise
- When is the best time to discuss



Be direct and clear. When communicating with others, speak up, ask for what you want, and listen. Remember to be polite and respectful to everyone you talk to.

BE DIRECT AND CLEAR

- Make your request clear
- Speak up for yourself
- Listen to others
- Be respectful and polite



Communicate in writing. Record everything related to your self-advocacy in the workplace. Save emails and keep good records.

COMMUNICATE IN WRITING

- Record all communication
- Save sent and received emails
- Keep good record to refer to later



Be persistent. If you are denied the services you need, you can appeal. Some services may routinely reject the first request. Other services may approve you for a lesser service than requested.

BE PERSISTENT

If request is denied

- Don't be discouraged
- Make an appeal
- Consider a compromise solution



Countering Stereotypes



You may have to work to dispel stereotypes that employers—many of whom have had no direct contact with service members or veterans—may have about you. Develop stories you can share during networking conversations and job interviews.

If you have a disability, you may find many people still uninformed about how disabilities affect people. They may be inexperienced working with some disabilities in the workplace. As a result, they can have negative stereotypes or low expectations of what people with disabilities can do.

You will also encounter people in the workplace who wish to assist you, but don't know how. Your ability to self-advocate can communicate your needs so solutions can be found. This communication will put you on the path to success.

When interviewing for the job, you will find most interviewers use a standard set of interview questions. However, some employers may interject questions based upon individual experiences or past work experiences. These experiences may create an unfair label or stereotype towards service members or veterans.

Addressing Stereotypes

ADDRESSING STEREOTYPES	
Stereotype	Response
“Military personnel are rigid and lack creativity.”	Share how you have improvised and innovated to meet unpredictable challenges.
“A veteran's only leadership approach is giving orders.”	Share how you have motivated, coached, guided, and supported team members using a collaborative leadership style.
“Most veterans have medical issues.”	Share a skill, such as resiliency, you developed as a result of being in the military. Describe a specific time it helped you overcome a personal setback (NOT medically related).

To address those stereotypes, you should develop stories you can share during networking conversations and job interviews. The chart identifies three common military stereotypes and a suggestion on how to prepare for each one.

Stereotype	Response
“Military personnel are rigid and lack creativity.”	Share how you have improvised and innovated to meet unpredictable challenges.
“A veteran's only leadership approach is giving orders.”	Share how you have motivated, coached, guided, and supported team members using a collaborative leadership style.
“Most veterans have medical issues.”	Share a skill, such as resiliency, you developed as a result of being in the military. Describe a specific time it helped you overcome a personal setback (NOT medically related).

Assessing Your Strengths Activity



Employers are mostly concerned about your ability to do the job. The skills that are promoted in the military are in high demand in private sector. What you learned in the military prepares you for stressful situations in life and in the workplace. Whether you gained these skills in the military, in another job or in training or school, review the list of skills and qualities below and identify those that apply to you.

Discuss how these skills and qualities can help you in the workplace.

- Integrity
- Respect
- Time Management
- Commitment
- Dependability
- Loyalty
- Service
- Courage
- Problem Solving
- Critical Thinking
- Duty
- Honor
- Excellence
- Negotiating
- Effective Teamwork

Self-Disclosure and Requesting Accommodations

SELF-DISCLOSURE AND REQUESTING ACCOMMODATIONS

Prepare to disclose a disability and request an accommodation by:

- Completing the Self-Disclosure and Accommodation Tool
- Referring to the Job Accommodation Network (JAN)



As we already learned, approximately 26% of veterans have a service-connected disability. If you are not comfortable with the word disability, review the following suggested words:

- Health-related instead of medical condition
- Medical condition or chronic condition instead of disability
- Acquired injury instead of disability
- Non-apparent instead of hidden or invisible wound

Self-disclosure is personal. You may not consider yourself disabled and may not identify as a wounded warrior. However, if you need a reasonable accommodation then you will have to disclose your disability.

Complete the Self-Disclosure and Accommodation Tool below and indicate the category for each response that most closely applies to you. Use your responses when evaluating the tasks and responsibilities required to do your job and to determine if you might need an accommodation.

Statement	Health-related Abilities	Your Response
I am able to sit without discomfort for:	<ol style="list-style-type: none"> 1. More than an hour at a time 2. 30-60 minutes at a time 3. 20-30 minutes at a time 4. Less than 15 minutes at a time 	
I require the use of closed captioning for my viewing needs:	<ol style="list-style-type: none"> 1. Never, I do not have any hearing concerns 2. I don't have hearing concerns but would benefit from closed captioning 3. Sometimes, I use other assistive technology for hearing 4. Always, 100% of the time 	
I am able to focus on a computer screen for:	<ol style="list-style-type: none"> 1. More than an hour at a time 2. 30-60 minutes at a time 3. 20-30 minutes at a time 4. Less than 15 minutes at a time 	
I can focus on an individual task without being distracted for:	<ol style="list-style-type: none"> 1. More than an hour at a time 2. 30-60 minutes at a time 3. 20-30 minutes at a time 4. Less than 15 minutes at a time 	
I require screen reading software:	<ol style="list-style-type: none"> 1. Never, I do not have any vision concerns 2. I don't have hearing concerns but would benefit from closed captioning 3. Sometimes, I use other assistive technology for hearing 4. Always, 100% of the time 	

Statement	Health-related Abilities	Your Response
I prefer to receive instruction and learn material:	<ol style="list-style-type: none"> 1. Face to face, sitting in a classroom 2. Virtually, on my computer 3. Mixed, some face to face and some virtual 	
When reading online content, I need to take a break:	<ol style="list-style-type: none"> 1. Every few hours 2. Once an hour 3. Once every 30 minutes 4. After about 15 minutes 	
My pain level affects my ability to think and focus:	<ol style="list-style-type: none"> 1. Not at all 2. 25% of the time 3. 50% of the time 4. 75% of the time 	
I require the use of mobility devices such as a cane, walker, or wheelchair:	<ol style="list-style-type: none"> 1. Not at all 2. 25% of the time 3. 50% of the time 4. 75% of the time 	
I can remember what I read or heard:	<ol style="list-style-type: none"> 1. 100% of the time 2. 75% of the time 3. 50% of the time 4. 25% of the time 5. Less than 25% of the time 	

The Job Accommodation Network (JAN) also provides [useful guidelines](#) for how to disclose a disability.

Self-Advocacy Scenario – Requesting an Accommodation



Eric was recently diagnosed with Post-Traumatic Stress Disorder (PTSD). His condition is controlled with medication. However, sometimes his sleep is disturbed which causes difficulty with concentration, recall, and articulating ideas. On these occasions, he benefits from wearing noise canceling headphones.

Eric applied for a Marketing Manager position with a highly competitive agency. The position requires someone with the ability to manage a marketing team. The candidate should be able to convey detailed marketing project ideas to the program management office and conduct virtual and in-person “Campaign Kick-Off” meetings with clients.

Prior to the interview, Eric researched PTSD. According to the American Psychiatric Association, PTSD affects approximately 3.5 percent of U.S. adults every year, and an estimated one in 11 people will be diagnosed with PTSD in their lifetime. Not all people with PTSD need an accommodation to perform their job.

To determine if he might need an accommodation, Eric reviewed the 10 health-related abilities statements. He identified five of the statements reflecting the need for some type of accommodation:

- Able to focus on a computer screen for 20-30 minutes at a time
- Can focus on an individual task without being distracted for 20-30 minutes at a time
- Prefers to receive instruction and learn material face to face and some virtual
- When reading online content, needs to take a break every 30 minutes
- Can remember what is read or heard 50% of the time

Based on these five statements, and the posted job description, Eric believes he could benefit from three accommodations:

- Flexible attendance or scheduling (self-pacing options, extended or additional time)
- Short breaks (also beneficial for body pains or emotional flare-ups)
- Low-stimulus environment (quiet office or remote options for preparing meeting presentations)

At the end of the interview, the employer asks, “What do you consider your most significant challenge?” Should Eric include a request for an accommodation in his answer?

Eric should start by describing the challenge he’s faced then discuss the measures he has taken to improve. He wants to complete his answer on a positive note. He can also use his response to show he is self-aware. He should show how he has worked to ensure he and his team successful, striving to continuously get better at his job. These traits are extremely attractive to employers.

EXAMPLE ANSWER: Sometimes I have difficulty with concentration and recall. I struggle with articulating ideas. I have found that chunking information into 30-minute timeframes and wearing noise cancelling headphones helps. Taking a break every 30 minutes allows me to clear my mind and be more efficient.

It may appear that I am often away from my desk. If I’m at my desk, I may look odd wearing my headphones. I don’t see myself as odd, but as non-conventional—even progressive. I have found that by using these tools, I am able to comprehend the information more quickly. When I shut out distractions around me, I find solutions more easily.

As the marketing team lead, I will apply alternative problem-solving solutions with my team to develop unique and innovative marketing projects to gain more clients.

If you were in a situation like Eric’s, would you ask for accommodations on the job? Why or why not?

Section 4: Resources for Workplace Concerns

Employment rights and protections is a complex topic covered by federal, state, and local laws. The information in this workshop provided an overview of employment rights and self-advocacy to assist you in determining if you are being treated fairly as a candidate and as an employee.

When in doubt, reach out. There are numerous resources including government agencies, Veteran Service Organizations and non-profits who are ready and able to assist. Consult the list of resources linked below for contact information. If needed, consider using the Job Accommodation Network (JAN) for free, one-on-one consulting on issues of workplace disclosure and reasonable accommodations.

Available Resources



Laws and Regulatory Agencies

[Department of Labor Veterans Employment and Training Services \(DOL VETS\)](#)

[Equal Opportunity Employment Commission](#)

[Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#)

[American with Disabilities Act \(ADA\)](#)

[Family and Medical Leave Act \(FMLA\)](#)

[Wages and Fair Labor Standards Act \(FLSA\)](#)

[Vietnam Era Veterans' Readjustment Assistance Act \(VEVRAA\)](#)

[Health Insurance Portability and Accountability Act \(HIPAA\)](#)

[U.S. Department of Labor's Office of Disability Employment Policy \(ODEP\)](#)

[The Job Accommodation Network \(JAN\)](#)

Department of Labor Resources

[Family and Medical Leave Act Employee Guide](#)

[Fact Sheet #28M\(b\): Military Caregiver Leave for a Veteran under the Family and Medical Leave Act](#)

EEOC Factsheets Discrimination in the Workplace

[Age Discrimination](#)

[Disability Discrimination](#)

[National Origin Discrimination](#)

[Religious Discrimination](#)

Recap



Congratulations! You have taken significant steps toward setting yourself up for success. Knowing and asserting your rights in the workplace will benefit you throughout your career. You have a network of supporters to assist you on your journey. In this workshop you have:

- Defined rights of employees
- Described self-advocacy and practical techniques
- Located resources for assistance with workplace issues

Thank you for your participation and your service. The DOL recognizes your dedication and the sacrifices that you and your family members have made to protect and defend our freedom. We are committed to supporting you in your transition and beyond.