

U.S. Department of Labor

Assistant Secretary for
Veterans' Employment and Training
Washington, D.C. 20210



September 2, 1994

VETERANS' PROGRAM LETTER NO. 11-94

MEMORANDUM FOR: ALL REGIONAL ADMINISTRATORS FOR VETERANS'
EMPLOYMENT AND TRAINING
ALL STATE EMPLOYMENT SECURITY ADMINISTRATORS
ALL DIRECTORS FOR VETERANS' EMPLOYMENT
AND TRAINING
ALL REGIONAL ADMINISTRATORS FOR EMPLOYMENT
AND TRAINING (INFO ONLY)

FROM: PRESTON M. TAYLOR JR. *Preston M. Taylor Jr.*

SUBJECT: Guidance on Americans with Disabilities Act

I. PURPOSE: The purpose of this Veterans' Program Letter is to provide you with current guidance on provisions of the Americans with Disabilities Act (ADA) as they relate to providing employment and training services to disabled veterans.

II. BACKGROUND: Director's Memorandum 23-92 (February 11, 1992) provided VETS' Regional Administrators with "preliminary" guidance on the subject. In it VETS explained the implications of the Act for DOL/VETS program operations and how best to respond to inquiries on the subject from State Employment Security Agency (SESA) staff and others.

Because of concerns about the possible conflict between the ADA's prohibition against making preemployment inquiries to find out if applicants are disabled, and the statutory obligations to identify disabled veterans who are eligible for special benefits, VETS petitioned the Equal Employment Opportunity Commission (EEOC) to include language in its TECHNICAL GUIDANCE MANUAL to allow the continuation of inquiries necessary to the implementation of our programs for covered veterans. That language was set forth in DM 23-92 at "III. PROCEDURAL GUIDANCE:" (EEOC ADA Technical Assistance Manual, Chapter V, Section 5.5(C)). That interpretation and its applicability has not changed.

III. PROCEDURAL GUIDANCE: SESAs need to be aware that the EEOC has made determinations about the validity and legality of preemployment invitations to applicants to voluntarily supply disability-related information needed to provide affirmative

action if (1) the employer is undertaking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, or any Federal, state, or local law (including relevant veterans' preference laws) that requires affirmative action for individuals with disabilities (i.e., require some action to be taken on behalf of individuals with disabilities) or, (2) the employer is voluntarily undertaking affirmative action for individuals with disabilities. Therefore, within the framework of VETS'/SESA legitimate service delivery, it would not be violative of the ADA to make preemployment inquiries for the purposes of determining whether or not an applicant is a disabled veteran. Further, inquiries to determine the level of compensation a disabled veteran may receive from the Department of Veterans Affairs are also legitimate preemployment inquiries since the response may be a determinant as to eligibility for programs and/or services. EEOC has stated that position in the Appendix to the final ADA rule and in its enforcement guidance on preemployment disability-related inquiries. (See EEOC's ENFORCEMENT GUIDANCE ON PREEMPLOYMENT DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMINATIONS UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990, Number 915.002, May 19, 1994.)

The SESAs' obligation to develop and maintain data on services provided to disabled veterans is unaffected by the ADA. In order for VETS to fulfill its mandated responsibilities to provide maximum assistance to veterans in employment and training related matters, inquiries about disabilities are necessary and allowed. Any noncompliance with this guidance carries the potential for depriving veterans of services and benefits to which they are entitled.

IV. INQUIRIES: SESA staff should direct questions concerning this matter to the Director of Veterans' Employment and Training (DVETS) in the State. DVETS should direct questions to their Regional Administrator for Veterans' Employment and Training. Regional questions should be directed to the VETS National Office.