

The Connecticut Commission on Human Rights and Opportunities Guide to Nondiscrimination in Hiring and Employing Connecticut Veterans

Questions and Answers for Employers

Discriminatory Employment Practices Against Veterans

Discrimination against honorably-discharged veterans in employment, housing, and credit transactions was prohibited by Connecticut General Statutes § 46a-60, a law that took effect on October 1, 2017. This law is administered by the Connecticut Commission on Human Rights and Opportunities (CHRO), which enforces anti-discrimination laws in the State of Connecticut. Connecticut law also bars discrimination in employment on the basis of race, color, religious creed, age, sex, sexual orientation, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, physical disability, including, but not limited to, blindness, or status as an honorably discharged veteran.

Policies that discriminate against veterans who received a less-than-honorable discharge from the military may also subject you to liability under current federal and state law, as a result of their disparate impact on veterans of color, LGBT veterans, and veterans with disabilities. Employer reliance on discharge status may violate Connecticut anti-discrimination law absent a showing of business necessity because of its disparate impact on service members' race, color, disability, sexual orientation, gender identity or expression or other protected class statuses.

Did you know?

What is a less-than-honorable discharge?

The U.S. military discharges service members under one of five designations: honorable discharge, general discharge under honorable conditions, other-than-honorable discharge, bad conduct discharge, and dishonorable discharge.¹ These latter four designations are often grouped together and referred to collectively as “less-than-honorable” or “bad paper” discharges.

How does someone receive a less-than-honorable discharge?

Nearly all veterans with “bad paper” are administratively separated from the military with a “general” or “other than honorable” discharge status.

These service members may have been separated for minor infractions (e.g. being late or watching a movie on duty) that would not have subjected them to criminal penalties in civilian life. Others have received less-than-honorable discharges for missing a flight for deployment or taking prescribed painkillers for a back injury. Service members have also been separated for overtly discriminatory reasons: prior to 2011, thousands of gay service members were discharged from the military solely because of their sexual orientation.

On the other hand, serious violations of the Uniform Code of Military Justice (UCMJ) may be comparable to criminal offenses in civilian life and can be adjudicated only by a court martial

¹ There is a sixth status, “uncharacterized,” given to service members discharged within 180 days of enlistment. It is neither honorable nor dishonorable.

proceeding, which resembles a criminal trial. UCMJ violations can result in bad conduct or dishonorable discharges, together these two discharges account for about 1% of all discharges. Even so, some veterans receive bad conduct discharges for offenses that are not criminalized in a civilian context, such as being absent without leave (AWOL).

Just knowing that an applicant or employee has received a less-than-honorable discharge tells you very little about him or her as a person or an employee.

What does discharge status have to do with racial discrimination?

Connecticut and federal law prohibit employment actions taken because of race, as well as practices that make it more difficult for members of other protected classes (race, sex, gender, veteran status, etc.) to obtain employment, even if the discriminatory effect is unintentional. A 2017 analysis of Defense Department records revealed that, like the civilian criminal justice system, the military justice system discriminates against persons of color. Black service members are [two times more likely](#) than white service members to have disciplinary action taken against them, despite having similar levels of educational attainment and income. Thus, you may be discriminating on the basis of race, and therefore subject to liability, if you exclude or disfavor job applicants or employees based on discharge status. This 2017 analysis was consistent with a [prior, substantial study](#) conducted by the Defense Department in the 1970s, which also found that black service members were far more likely to be separated with less-than-honorable discharges.

Are other groups disproportionately impacted by the military justice system?

Yes. Use of military discharge status information in employment decisions may also have the effect of discriminating against individuals with disabilities and LGBT veterans. Veterans with undiagnosed or untreated mental health conditions, including traumatic brain injuries (TBI) and PTSD have received bad paper due to misconduct stemming from their disability. LGBT veterans continue to experience the discriminatory effects of Don't Ask Don't Tell, as six years after the policy was rescinded, the more than 100,000 veterans discharged with less-than-honorable characterizations for being LGBT have not received a blanket upgrade.

What am I doing that might violate the law?

Current employment practices may run afoul of the law if they include "Honorable-only" requirements in employment advertisements or offer hiring preferences to veterans with honorable discharges only. Due to endemic biases within the military justice system, these exclusionary policies may have a disparate impact based on race, sexual orientation, and disability and possibly others, which are protected classes under Connecticut law. Even less formal or comprehensive uses of discharge information (e.g., docking points from a veteran's application) may subject an employer to liability if the circumstances surrounding the veteran's less than Honorable discharge have little relevance to an individual's ability to perform the duties of the job in question. For example, if an applicant received a "general" discharge status because she lost her meal pass, it likely would not be proper to refuse to consider her application for a retail position. Similarly, if an applicant veteran had been discharged less than honorably twenty-five years ago, the veteran's discharge status may no longer be relevant.

How can I avoid violating the law?

Provide individualized consideration to veterans with less-than-honorable discharges. This means you should consider the nature of the discharge (i.e. why the veteran was discharged—was it for a minor infraction or because of behaviors related to a mental health condition?), the time elapsed since the discharge, the nature of the positions sought and how the discharge is in any way related to the position the veteran is applying for. Second, you should provide the veteran-applicant the opportunity to present her case for why the discharge should not be factored into your hiring decision. You might also consider the presence of mitigating circumstances like PTSD if the veteran discloses them to you. Additionally, for those service members who were discharged due to conduct arising from a disability like PTSD, you have an independent obligation under both state and federal law to provide “reasonable accommodations” such as making the physical work environment accessible or providing a flexible work schedule.

Finally, if you contract with a consumer reporting agency such as HireRight or TransUnion to conduct background checks and your background check results in the discovery of information about an individual’s discharge status, you are required under the Fair Credit Reporting Act to provide notice to the veteran applicant *prior* to taking any adverse action (for example, not hiring or firing an employee) based on the information you received. Notice must include a copy of the background check report as well as a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act," which you should have received from the consumer reporting agency. Giving a veteran notice provides an opportunity to explain why the discharge should not be factored into the hiring decision for this particular position.

If you do ultimately take an adverse action on the basis of the background check report, you must inform the applicant 1) that he or she was rejected due to the information in the report; 2) the name, address, and phone number of the company that sold you the report; 3) that the company selling the report was not responsible for the adverse decision; and 4) that the applicant has a right to dispute the accuracy of the report and to get an additional free report from the consumer reporting agency within 60 days.

What are some other best practices?

You should have little need for proof of an applicant’s service, unless state law requires such proof or in other rare circumstances like obtaining a security clearance. If your business requires confirmation of service, for whatever reason, however, you can take steps to ensure that the process is less intrusive. An individual’s military discharge status is listed on an official document known as a “DD-214.” There are two versions of this form—a short form and a long form, the latter of which can include invasive personal information. You should request only the short form DD-214 when making employment decisions such as hiring or promotion except when required by state or federal law. In order to encourage individuals with less-than-honorable discharges to apply, you should request copies of the DD-214, if at all, only in the final stages of the hiring process.

You could also include affirmative language in job applications indicating that veterans are welcome to apply, regardless of their discharge status.