

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 152
Finance

(Senator Manno, *et al.*)

Economic Matters

Labor and Employment - Hiring and Promotion Preferences - Veterans of
Commissioned Corps

This bill expands the definition of “eligible veteran” to include veterans of the Commissioned Corps of the Public Health Service and the Commissioned Corps of the National Oceanic and Atmospheric Administration for the purpose of authorizing an employer to grant a hiring and promotion preference to an eligible veteran, the spouse of an eligible veteran who has a service-connected disability, or the surviving spouse of a deceased eligible veteran.

Fiscal Summary

State Effect: None. The bill does not apply to State agencies. The Department of Labor, Licensing, and Regulation can implement and enforce the bill with existing resources. No effect on revenues.

Local Effect: None. The bill does not apply to local governments as employers.

Small Business Effect: Minimal.

Analysis

Current Law: Chapter 318 of 2016 authorizes an employer to grant a hiring and promotion preference to an eligible veteran, the spouse of an eligible veteran who has a service-connected disability, or the surviving spouse of a deceased eligible veteran. An “eligible veteran” is a veteran of any branch of the U.S. Armed Forces who has received an honorable discharge or a certificate of satisfactory completion of military service,

including the National Guard and the military reserves. Granting this preference does not violate any State or local equal employment opportunity law.

Background: State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. For the purposes of this prohibition, the State and local governments are considered employers.

The federal Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

Antidiscrimination laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits. EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. If EEOC finds that discrimination has occurred, it tries to settle the charge. If not successful, EEOC has the authority to file a lawsuit to protect the rights of individuals and the interests of the public but does not, however, file lawsuits in all cases in which there was a finding of discrimination.

Veterans' preferences have the potential to adversely affect the employment opportunities of women, as women have historically encountered barriers to service in the armed forces and are currently underrepresented in them. Section 712 of Title 7 of the Civil Rights Act of 1964 allows employment preferences for veterans if they are authorized under federal, state, or local law. The section does not define "veterans." EEOC's policy guidance on veterans discusses how EEOC processes cases. Where the veterans' preference is granted under the authority of a federal, state, territorial, or local law, a "no cause" letter of determination should be issued by EEOC after (1) obtaining a copy of the relevant statute and verifying that the preference extended by the employer is authorized by the statute and (2) determining that the preference is accorded in a nondiscriminatory manner. However, when an employment preference is conferred upon veterans on the employer's own initiative, and is *not authorized* in statute, EEOC's position is that veterans' preferences have an adverse impact on women and a "cause" letter of determination is issued unless the employer successfully rebuts EEOC's presumption of adverse impact.

Regarding State employees, a former prisoner of war, an eligible veteran, the spouse of an eligible veteran who has a service-connected disability, or the surviving spouse of a deceased eligible veteran receives a hiring preference for a position within the State Personnel Management System requiring a selection test. An eligible veteran is defined as a veteran of any branch of the U.S. Armed Forces who has received an honorable discharge or a certificate of satisfactory completion of military service, including the National Guard and the military reserves.

Additional Information

Prior Introductions: SB 231 of 2017 passed the Senate and received an unfavorable report from the House Economic Matters Committee.

Cross File: HB 1617 (Delegate Morales, *et al.*) - Economic Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; U.S. Equal Employment Opportunity Commission; Department of Legislative Services

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