
SENATE COMMITTEE ON MILITARY AND VETERANS AFFAIRS

Senator Bob Archuleta, Chair

2023 - 2024 Regular

Bill No: SB 73 **Hearing Date:** 4/24/23
Author: Seyarto
Version: 3/22/23 As Amended
Urgency: No **Fiscal:** Yes
Consultant: Jenny Callison

Subject: Employment policy: voluntary veterans' preference

DESCRIPTION

Summary:

Various statutes, such as the Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights Act, prohibit discrimination in employment, housing, public accommodation and services provided by business establishments on the basis of specified personal characteristics such as sex, race, color, national origin, religion, and disability. Over time, these statutes have been amended to include other characteristics such as medical conditions, marital status, and sexual orientation. Also over time, other statutes were amended to reflect the state's public policy against discrimination in all forms.

Existing law:

The Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) provides employment discrimination protection for a person who is in active military duty or a veteran and has an obligation to perform service in a uniformed service (United States Armed Forces, United States Armed Forces Reserve, the United States National Guard). (38 U.S.C. § 4311.)

The California Military and Veterans Code incorporates this discrimination protection, and further extends it to members or veterans of the California National Guard. (Mil. & Vet. Code § 394.) AB 556 (Salas, Ch. 691, Stats. 2013) incorporated protection from discrimination and retaliation for military employees and veterans into FEHA.

This bill:

Would enact the Voluntary Veterans' Preference Employment Policy Act to authorize private employers to establish and maintain a written veterans' preference employment policy and to give veterans preference in employment decisions. Specifically this bill:

- 1) Establishes the Voluntary Veterans' Preference Employment Policy Act ("Act").
- 2) Provides that notwithstanding any other law, a private employer may establish and maintain a written veterans' preference employment policy, which shall be applied uniformly to hiring decisions.

- 3) Requires employers who adopt voluntary veterans' preference employment policies to report specified information to the Civil Rights Department annually.
- 4) Provides that the failure to submit the specified information shall render any preference granted by the employer ineligible for the protections of the Act.
- 5) Specifies that the granting of a veterans' preference, in and of itself, shall be deemed not to violate any local or state equal employment opportunity law or regulation, including, but not limited to, FEHA.
- 6) Requires the Department of Veterans Affairs to assist any private employer in determining if an applicant is a veteran, to the extent permitted by law.
- 7) Provides that nothing in the Voluntary Veteran's Preference Employment Policy Act shall be construed to authorize the establishment or use of a veterans' preference employment policy for the purpose or with the effect of unlawfully discriminating against an employment applicant on the basis of any protected classification under FEHA.
- 8) Specifies that it is the intent of the Act that the preference will benefit veterans of all protected classes, including women and LGBTQIA persons and that an employer's adoption of a voluntary veterans' preference employment policy is not intended to have the effect of discriminating against any veteran who is a member of any other protected classification in FEHA.
- 9) Requires an employer with a veterans' preference employment policy to accept any of the following as proof of an individual's status as a veteran:
 - a DD Form 214, Member-4;
 - a current and valid driver's license with the word "VETERAN" printed on its face pursuant to Section 12811 of the Vehicle Code; and
 - a current and valid identification card with the word "VETERAN" printed on its face pursuant to Section 12811 of the Vehicle Code.

BACKGROUND

Veterans of the United States military are a diverse group from across the United States and the US Territories. Upon completion of their service, the outcomes of veterans are just as diverse. Some veterans go on to gain an education, learn a trade, create a business, or grow a family. Other veterans leave the service with less than stellar physical and mental health, and due to a plethora of circumstances end up unemployed, homeless, and often hopeless.

Veterans hold unique skill sets and work ethics instilled during their time in service that sets them apart from the civilian population. In recognition of their service and commitment to this country, there are variety of employment incentives to assist veterans to find fulfilling employment.

- California under Government Code 18973 gives Veteran Preference for hiring for State Jobs.

- California FEHA and Unruh Civil Rights provide the protections against discrimination, including Veterans status.
- Federal Work Opportunity Tax Credit gives tax incentives for businesses to hire veterans endangered of becoming homeless.
- The Office of Personnel Management under Title 5 of US Code gives Veteran Preference for hiring for Federal Jobs.

COMMENT

This bill allows a private employer to establish a veterans' preference employment policy. This private employer, who opts to provide veteran preference in hiring decisions, must establish and maintain a written veterans' preference employment policy. In this way, other applicants or employees would be made aware of the employer's hiring policy. In the absence of such written policy, the employer may be liable for discrimination against another employee or applicant. Moreover, seeking to address concern that a veteran's preference policy created under this bill could be used by an employer in order to discriminate against the other protected classes under FEHA, the bill contains provisions that establish that:

- nothing in the bill shall be construed to authorize the establishment or use of a veterans' preference employment policy for the purpose or with the effect of unlawfully discriminating against an employment applicant on the basis of any protected classification; and
- the veteran's preference program shall be applied uniformly to hiring decisions.

According to the author:

“While both the Federal and State Governments have recognized the value and sacrifice of our Nation's Heroes and even provided incentives for businesses to hire Veterans, California has not explicitly made it clear that a business is allowed to develop policies that give Veterans preference for hiring. While only 7% of the population can claim veteran status, 13% of the homeless adult population are Veterans, nearly double the rate of their peers.

The U.S. Equal Employment Opportunity Commission has provided the clarification under Title VII that policies providing Veterans preference are lawful as long as permitted by state or local law. This has led to more than half of the states adopting policies to permit private sector Veterans preference, leaving California behind the curve in supporting its Veteran population. SB-73 will add California to the list of states that recognize that Veterans deserve a helping hand by our private sector employers.”

Amendments: As discussed in Judiciary Committee, the author plans to make amendments prior to the Assembly Floor that do not affect this analysis.

POSITIONS

Sponsor: Author.

Support: Housing Contractors of California

Oppose: None on File

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