

Helping Put America to Work



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If you have recently flipped through a magazine, watched television, or browsed the internet, you have almost certainly seen an article or segment regarding the hiring of veterans. Over the past few years, there has been a concerted national effort on getting the nation's veterans back to work, and many of the nation's largest employers have pledged to hire veterans. According to G.I. Jobs "Top 100 Military Friendly Employers," many of the employers represented in the top 100 are familiar household names.¹

With the push to hire veterans, it is no surprise that the government at both the federal and state level participates in the effort. Although numerous government programs exist which seek to encourage employers to hire people from these groups, this paper will focus primarily on programs that provide tax incentives to encourage the hiring of veterans.

Federal Programs

In 2011, the federal government enhanced the Work Opportunity Tax Credit ("WOTC") program. WOTC was created by the Small Business Job Protection Act of 1996 and provides a federal income tax credit to private-sector businesses who hire individuals from designated target groups with significant barriers to employment.² Over the years, the federal government has used the WOTC program to support the hiring of specific targeted groups of individuals, such as Hurricane Katrina victims, disconnected youth and unemployed veterans.

The WOTC is administered by the Department of Labor, through the Employment and Training Agency, which has responsibility for developing policy and program guidance for WOTC processing, verification, and certification processes and works in collaboration with the Internal Revenue Service to achieve this goal. The WOTC falls under the general business credit and is therefore subject to the net tax liability limitation of Section 38 of the Internal Revenue Code ("IRC") and the carryback and carryover rules of Section 39 of the IRC.

¹ <http://employers.militaryfriendly.com/>

² 26 USCS § 51.

In 2011, President Barrack Obama signed the “Vow to Hire Heroes Act” (P.L. 112-56, The “Vow Act”) to help encourage companies to hire veterans. The Vow Act extended the expiration date of the veteran targeted group within the WOTC program and created two new veteran-focused credits within the WOTC program, the Returning Heroes Tax Credit and the Wounded Warrior Tax Credit. The Returning Heroes Tax Credit would provide an incentive for businesses to hire both short-term and long-term unemployed veterans with a credit of 40% of wages (on the first \$6,000 of wages for short-term unemployed and \$14,000 of wages for long-term unemployed). The Wounded Warrior Tax Credit would double the existing tax credit for long-term unemployed veterans with service-connected disabilities. The Vow Act would also create a Special Employer Incentive program where in certain instances the Veteran’s Administration would pay up to half the salary (for their first six to nine months) of a veteran engaged in an on-the-job training program. Additionally, for the first time since the inception of the WOTC program, the Vow Act also allows qualified tax-exempt 501(c) organizations to claim a credit against payroll taxes for hiring qualified veterans.

With the passage of the Vow Act, there are a number of statutorily defined categories of individuals for which a tax credit could be available upon employment.³ As of December 31, 2013, these include:

- Qualified IV-A recipient
- Qualified veteran
- Qualified ex-felon
- Designated community resident
- Vocational rehabilitation referral
- Qualified youth summer employee
- Qualified supplemental nutrition assistance program benefits recipient
- Qualified SSI recipient
- Long-term family assistance recipient

It should be noted that the WOTC credit for all targeted groups expired as of December 31, 2013. The WOTC is an incentive that is often referred to as one of the “tax extenders” that must be reauthorized by Congressional action every year or two. While there is no guarantee that the WOTC will be extended for periods subsequent to December 31, 2013, Congress has shown a consistent practice since the inception of the WOTC to enact extension legislation (retroactively, when necessary).

Please refer to Exhibit A for a definition of each targeted group.

The WOTC amount for most targeted groups can be up to \$2,400 per employee, or 40 percent of the employee’s first-year qualified wages up to \$6,000. Qualified first year wages are defined as wages that an employee certified as belonging to a targeted group earns during the 1-year period beginning the day the employee starts work.⁴ The first year wages are used to calculate the subsequent tax credit. The credit is 25% of qualified first-year wages for those employed at least 120 hours but fewer than 400 hours and 40% for those employed 400 hours or more.⁵

³ 26 USCS § 51(d).

⁴ ETA HB 408, III-1.

⁵ Pursuant to the WOTC statute and 26 U.S.C.S. § 280C(a), when calculating income tax deductions for the tax year, the amount received as a tax credit under WOTC for each certified employee must be added back to the amount deducted for wages for the tax year.

The potential WOTC credits (including those added by the Vow Act) available for hiring veterans can increase depending on a number of factors. The first year qualified wages are limited to \$6,000 for most qualified groups, which amounts to a yearly credit of up to \$2,400.⁶ The wage limit for disabled veterans is \$12,000, if hired within one year of leaving the service, or \$24,000, if unemployed for at least 6 months, amounting to a yearly credit of up to \$4,800 and \$9,600, respectively.⁷ The wage limit for a qualified veteran who has been unemployed for at least 6 months is \$14,000, amounting to a yearly credit of up to \$5,600.⁸

In addition to enacting legislative action intended to spur the hiring of veterans, on August 27, 2013, the U.S. Department of Labor announced final rules to improve the hiring and employment of veterans by government contractors. The final rules update the Vietnam Era Veterans' Readjustment Assistance Act of 1974, which for 40 years has prohibited federal contractors and subcontractors from discriminating in employment against protected veterans and requires these employers to take affirmative action to recruit, hire, promote, and retain these veterans.

The final rules are effective beginning March 24, 2014 and strengthen the affirmative action provisions of the regulations to aid contractors in their efforts to recruit and hire protected veterans and improve job opportunities for protected veterans.

State Programs

In an effort to encourage companies to hire veterans, a number of states have created similar programs including training grants, employment preference laws, and tax credits. To date, a non-exhaustive list of states that have created programs specific to the goal of employing veterans includes the following: Alabama, Alaska, Arizona, Delaware, Connecticut, Illinois, New Mexico, New York, Utah, Vermont, West Virginia and Wisconsin. Other states have taken a broader approach to spur employment and have enacted legislation that encompasses other qualifying groups, of which veterans are one such group. Two such state credit programs include the California New Employment Credit and the Connecticut Job Expansion Credit.

As with any tax credit, the determination of whether the hired individual is eligible and the employer may claim the tax credit requires close analysis. For instance, Alabama has narrowly defined the businesses that are eligible for the credit as small businesses⁹ and their Tax Credit for Veterans Who Start Their Own business¹⁰ is limited to those veterans who start their own small business. Therefore, an employer should always confirm its qualification as an eligible employer before claiming a credit.

An employer should also be aware that the definition of a qualified or eligible "veteran" may vary from state to state. Therefore, the rules and requirements for each credit should be examined in detail to confirm that the qualifications as a veteran are satisfied. Factors to consider include the branch of the service in which the veteran served, whether or not the veteran is unemployed, whether or not the veteran is disabled and/or the date when the veteran was discharged from duty. A particular state's definition of a veteran might include

⁶ 26 USCS § 51(b)(3).

⁷ 26 USCS § 51(b)(3).

⁸ 26 USCS § 51(b)(3).

⁹ Code of Ala. §40-18-322

¹⁰ Code of Ala. §40-18-323.

one, some, or all of the aforementioned factors. For example, Alaska defines a veteran as one who served in and was honorably discharged from the U.S. armed forces or Alaska Territorial Guard, Army or Air National Guard, or the Naval Militia¹¹ while California defines a veteran as one who has separated from service in the U.S. Armed Forces.¹² In addition, states may also impose a time limit based on how recently the veteran was discharged from active duty. In New York, a veteran is one who has been separated from active duty after September 11, 2001,¹³ while California stipulates the veteran has to have been discharged within the last 12 months.¹⁴

Certain states that have veterans hiring credit programs provide for an increased credit amount if the veteran is disabled. The incremental increase can range from \$1,000 greater or up to three times greater than the base veteran credit. For example, New York increases its veteran credit from \$5,000 to \$15,000 in a case where the qualified veteran is also disabled¹⁵ while Alaska increases its credit from \$2,000 for a qualified veteran to \$3,000 for a qualified disabled veteran.¹⁶

In order to claim these veteran hiring credits, states may mandate an employment retention period. For example, New York requires that the employee work more than 35 hours a week for at least 12 months, before the credit can be claimed.¹⁷ Utah's veteran credit requires that the qualified veteran work for at least 45 of the 52 weeks following the date of employment.¹⁸

Conclusion

With so much focus on returning the nation's veterans to the work force, it is not unexpected that the federal government and many state governments have responded by providing tax incentive programs to further this goal. At the time of this paper, New Jersey and Washington have now introduced legislation for a veteran credit, and Arizona has also introduced legislation to create an additional veteran credit. State economic development and job credit programs for veterans offer valuable opportunities for employers who take advantage of these programs. Recognizing that the various federal and state programs may differ with respect to their definition of a veteran, permissible credit amounts, documentation requirements and formalized process which must be followed to claim the credits, employers willing to take the necessary steps to claim these credits receive both economic rewards and provide a valuable service for those individuals who have served our country.

¹¹ Alaska Stat. §43.20.048(f)(3).

¹² Sec. 23626(b)(10(A)(vi)(II), Rev. & Tax Code.

¹³ NY CLS Tax § 210(23-a)(b).

¹⁴ Sec. 23626(b)(10(A)(vi)(II), Rev. & Tax Code.

¹⁵ NY CLS Tax § 210(23-a)(d).

¹⁶ Alaska Stat. §43.20.048(c).

¹⁷ NY CLS Tax § 210(23-a)(d).

¹⁸ Utah Code Ann. §59-7-614.9(1); Utah Code Ann. §59-7-614.9(2).

Exhibit A

Target Group Descriptions

Qualified IV-A Recipient

A qualified IV-A recipient is an individual who is certified as being a member of a family receiving assistance under a State program funded by title IV of the Social Security Act, or any successor of such a program, for any 9 months during the 18-month period ending on the date of hire.¹⁹ This program is commonly referred to as Short-term Assistance for Needy Families (TANF).

Qualified Veteran

A qualified veteran includes 1) any veteran who is designated as a member of a family receiving assistance under a supplemental nutrition assistance program for at least a 3-month period ending during the 12-month period preceding the date of hire; or 2) entitled to compensation for a service-connected disability if they have a hiring date not more than 1-year after discharge or release from active duty, or has aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6 months; or 3) having aggregate periods of unemployment during a 1-year period ending on the hiring date which equal or exceed 4 weeks, but less than 6 months; or 4) having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6 months.²⁰

Qualified Ex-Felon

In order for an ex-felon to qualify, they must have been convicted of a felony and have a hire date that is not more than 1 year after their last conviction or release from prison.²¹

Designated Community Resident

A designated community resident is an individual certified as being between the ages of 18 and 39 and residing, and continuing to reside during the time of employment, within a designated geographical area. For the purposes of the WOTC, these designated areas include Empowerment Zones, Enterprise Communities, Renewal Communities and Rural Renewal Counties.²² Empowerment Zones, Enterprise Communities, and Renewal Communities are federally designated distressed urban and rural areas that have been targeted for economic revitalization.

Vocational Rehabilitation Referral

A vocational rehabilitation referral is an individual certified as having a physical or mental disability that is a substantial handicap to employment and is referred to the employer during or after completion of rehabilitative services under a designated rehabilitation program.²³

¹⁹ 26 USCS § 51(d)(2).

²⁰ 26 USCS § 51(d)(3).

²¹ 26 USCS § 51(d)(4).

²² 26 USCS § 51(d)(5)(A) and 26 USCS § 51(d)(5)(B).

²³ 26 USCS § 51(d)(6).

Qualified Summer Youth Employee

Qualified summer youth employee means an individual who is aged 16 or 17 at the date of hire who works between May 1 and September 15, has not previously been employed by the employer, and is certified as residing within an empowerment zone, enterprise community, or renewal community.²⁴

Qualified Supplemental Nutrition Assistance Program Benefits Recipient

A qualified Supplemental Nutrition Assistance Program (SNAP) benefits recipient is an individual certified as being between the ages of 18 and 39, and a member of a family receiving supplemental nutrition assistance under the Food and Nutrition Act of 2008 for the 6-month period ending on the date of hire or for at least 3 months of the 5-month period ending on the date of hire if the member's family ceases to be eligible.²⁵

Qualified SSI Recipient

A qualified Supplemental Security Income (SSI) recipient means an individual certified as receiving SSI benefits under title XVI of the Social Security Act for any month ending within the 60-day period ending on the date of hire.²⁶

Long-term Family Assistance Recipient

A long-term family assistance recipient is an individual certified as being a member of a family receiving assistance under a IV-A program for at least the 18-month period ending on the date of hire, or being a member of a family receiving such assistance for 18 months after August 5, 1997 with a hire date no more than 2 years after the end of the earliest such 18-month period, or being a member of a family which ceased to be eligible for such assistance due to a limitation imposed by Federal or State law regarding the maximum period or amount payable to an eligible family.²⁷ This is often referred to as long-term TANF (Temporary Assistance for Needy Families).

²⁴ 26 USCS § 51(d)(7).

²⁵ 26 USCS § 51(d)(8).

²⁶ 26 USCS § 51(d)(10).

²⁷ 26 USCS § 51(d)(2).