

employer to assure that the employer will be able to provide lifetime employment to the veteran who successfully completes the job training program, the employer should be able to assure that a reasonable likelihood exists of ongoing employment for the veteran in the position for which trained. It would be wasteful and absurd to subsidize an employer for 18 months of training a veteran for a job known or expected to last only 1 year or less after training is completed. VA notes that section of the statute provides for withholding a portion of the payment due the employer until the veteran has been employed for 4 months after training is completed as an incentive to the employer to retain the veteran in employment. However, a mere guarantee of a job for 4 months clearly would not be sufficient to indicate that the training will result in long-term, stable employment. VA could have circumscribed the duration of employment deemed temporary at any greater number of months or years but settled on a range up to 1 year, consistent with the temporary employment concept generally used in Federal hiring, as reasonably reflecting jobs considered to be of short duration.

The definition of the term "intermittent job" recognizes that in most jobs the employee works on a regular schedule. If the nature of the job is such that the employer cannot provide the employee with a regular job schedule, VA has determined that the sporadic nature of the veteran's employment would be intermittent at best and the definition provides accordingly.

The amount of work provided in "seasonal jobs" varies from place to place within the United States. For example, in some states along the northern tier outdoor construction is unavailable for half of the work year, while in other states such as Florida and Hawaii this type of work is available year-round. Rather than define "seasonal job" by listing specific jobs which are seasonal in at least part of the country, VA has chosen to define this in terms of the number of consecutive days for which no employment is provided. VA chose 90 days because this is approximately one-quarter of the year. A job which provides no work for at least this length of time would truly be seasonal.

Finally, the term "related employment" is defined, as more fully explained below, to indicate that the job training to be provided may actually result in long-term employment in a different but "related job" or one at a higher level in the same field.

The Service Members Occupational Conversion and Training Act provides a list of items an employer must certify in order to obtain payments for training a veteran. The last item in this list states that the certification may include other criteria which are essential for the effective implementation of the program (sec. 4486(d)(13)). Consequently, the list of items to be certified contains some which are not specifically enumerated in the statute.

Section 21.4822(a)(3)(xiii) requires the employer to consider any prior training the veteran may have had in the field for which he or she is to be trained and to shorten the training program appropriately. The Act requires that the employer not place in a training program anyone who is fully qualified for the job which is the goal of the program. Shortening the training program for those who are partially qualified, VA believes, is in accord with the intent of this restriction and will preserve the limited monetary resources in this program so that the number of veterans to be trained will be maximized.

Section 21.4822(a)(3)(xv) requires the employer to state the number of employees in the firm if the employer wishes to be paid monthly. The Service Members Occupational Conversion and Training Act states that employers may be paid monthly if being paid quarterly would be unduly burdensome for the employer. VA's experience in administering the Veterans' Job Training Act, a similar program with a similar provision, has shown that the burden on the employer is related to the number of employees, because of the need of employers with few employees to maintain their cash flow. Section 21.4832(a)(2) discussed below limits the number of employees an employer may have and still be paid monthly. Hence, the need for this information.

Section 21.4822(a)(3)(xii) provides that the employer will certify that the trainee will have the opportunity to participate in a personal interview with a case manager if one is assigned to him or her. The Service Members Occupational Conversion and Training Act (sec. 4493) provides that the implementing official will provide case managers to be assigned under certain circumstances to veterans in training. The Act further provides that the trainee will have an in-person interview with the case manager within 60 days of entering into training. Under the provisions of the Memorandum of Agreement the Secretary of Labor will provide these case managers. It is reasonable, given the requirements of the law for an in-person interview, that

the employer certify that the interview may take place during normal working hours.

The Service Members Occupational Conversion and Training Act provides that the implementing official may prohibit payments to an employer on behalf of new trainees when the completion rate for a training program is disproportionately low due to deficiencies in the quality of the program. The law is specific as to the evidence the official must consider when determining when there are deficiencies in the quality of the program, but the law does not state what a disproportionately low percentage is. Section 21.4823(c) specifies the minimum completion rate needed to qualify for payment.

That paragraph provides that unless the program has had at least five trainees only very strong evidence that deficiencies exist will cause VA to consider whether the completion rate is disproportionately low. Four or fewer trainees do not provide sufficient data for a percentage determination to be meaningful.

If there have been five or more trainees, the regulation provides that, in effect, VA will compare the percentage of trainees who have successfully completed the particular training program during the three years which immediately precede the calculation with the percentage of all trainees who have ever successfully completed all training programs. If the percentage of successful completers of a program is less than half the percentage of successful completers of all programs, the percentage is low and will be considered as disproportionately low if the program fails to meet the other qualifications in the regulation. While the legislative history of the Act fails to define or indicate what constitutes a disproportionately low successful completion rate, VA believes that requiring a successful completion rate of at least half the national average will not place too great a burden on employers. Requiring no greater than half the national average adequately takes into account the fact that with less than 10 or 12 trainees the one unsuccessful trainee may have a large effect on the successful completion rate.

Section 21.4824 provides for withdrawal of approval if VA discovers that the program ceases to meet approval requirements, or the required employer's certifications were false in any material respect, or the employer refuses to make available the progress records for the trainees in a training program. While the Service Members Occupational Conversion and Training