



# VETS USERRA FACT SHEET #5: Frequently Asked Questions – Employment Protections for Veterans and Service Members under USERRA and VEVRAA – A Side-By-Side Look

The following frequently asked questions provide general information about the different types of employment protections for veterans and service members under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA).

#### 1. What are USERRA and VEVRAA?

USERRA's purposes are to encourage non-career	VEVRAA prohibits certain employers who do business
service in the uniformed services by eliminating the	with the federal government, known as federal
disadvantages to civilian employment which can result	contractors and subcontractors, from discriminating in
from such service; to minimize the disruption to the	employment against protected veterans and requires
lives of persons performing uniformed service as well	these contractors to take affirmative action to recruit,
as to their employers, fellow employees, and	hire, promote, and retain protected veterans. 38 USC
communities, by providing for prompt reemployment	4212; 41 CFR 60-300.
upon completion of service; and to prohibit	
discrimination against persons because of uniformed	
service. USERRA builds upon the protections provided	
in predecessor statutes. 38 USC 4301; 20 CFR 1002.2.	

#### 2. Am I covered under USERRA or VEVRAA or both?

USERRA protects past, present, and potential service	Veterans that fall into one or more of the following
members, including the National Guard, the Public	categories are covered by VEVRAA: (1) disabled
Health Service, and the National Disaster Medical	veterans; (2) recently separated veterans; (3) active
System from discrimination. USERRA confers additional	duty wartime or campaign badge veterans; or (4)
rights and benefits onto service members including	Armed Forces service medal veteran. These categories
reemployment after uniformed service.	are defined at 38 USC 4212(a)(3)(A) and 41 CFR 60-
<b>USERRA</b> applies to all employers, regardless of size, including federal contractors, the federal government, states, foreign employers in U.S., and U.S. employers abroad. 38 USC 4303(4) & 4303(16); 20 CFR 1002.5(o) & 1002.34.	<ul> <li>300.2 and in OFCCP's <u>"Am I a Protected Veteran"</u> infographic.</li> <li>VEVRAA applies to employers with a federal contract or subcontract of \$150,000 or more. If the employer has at least 50 employees and a single contract or subcontract of \$150,000 or more, then it must also</li> </ul>

develop a <b>VEVRAA</b> Affirmative Action Program (AAP), as described in 41 CFR 60-300, Subpart C.
Federally assisted construction contracts and subcontracts are exempt from <b>VEVRAA</b> .

If **VEVRAA** does not apply to your employer, you may still be covered under **USERRA** because it broadly includes almost all veterans, service members, and their employers.

#### 3. What actions are prohibited by USERRA or VEVRAA?

**USERRA** prohibits an employer from taking adverse action against you if your current military service, past military service, or future military obligations, or your exercise of **USERRA** rights, statement in a **USERRA** case, or participation in a **USERRA** investigation, are any part of the reason motivating the action. This includes not hiring you, not promoting you, firing you, or denying you any benefit in employment if motivated at least in part by your service or actions.

**USERRA** also requires an employer to reemploy a returning employee in the appropriate position, with restored pension benefits and seniority, if the employee complies with certain eligibility criteria. This includes qualifying the employee for the proper escalator position and accommodating a returning disabled employee by placing them in the appropriate reemployment position.

USERRA also contains certain health insurance requirements, provisions for non-seniority benefits while away on military service, protections against discharge after return from service of at least 30 days, and other protections set forth in the statute. 38 USC 4311-4318; 20 CFR 1002.18-23, 1002.32, 1002.150, 1002.163-1002.168, 1002.180, 1002.191-1002.197, 1002.210, 1002.225-1002.226, 1002-247 & 1002.259-1002.267. **VEVRAA** prohibits a contractor or subcontractor from taking adverse action against you based on your status as a protected veteran, or your participation in a protected activity such as filing a complaint, opposing an unlawful act, exercising a protected right, or participating in an investigation, hearing, or compliance activity under **VEVRAA**. Examples of adverse action include, but are not limited to, not hiring you, not promoting you, firing you, or denying you any benefit in employment, because of your protected veteran status. These protections extend to non-veteran individuals who are discriminated against because they are known to have a family, business, social, or other relationship or association with a protected veteran. 41 CFR 60-300.21(e).

**VEVRAA** also requires federal contractors and subcontractors to make reasonable accommodations for otherwise qualified disabled veterans and prohibits denying qualified disabled veterans equal access to health insurance. 41 CFR 60 300.21(f); 41 CFR 60 300.25(d).

### 4. What remedies would I be entitled to under USERRA and/or VEVRAA?

USERRA provides for make-whole relief, including lost	If there is a discrimination violation of VEVRAA, the
wages, restoration of pension benefits, employment or	Office of Federal Contract Compliance Programs
reemployment with the employer, and injunctive relief.	(OFCCP) may seek back pay and interest and other
	make whole relief (such as reinstatement or a job offer)

USERRA does not provide for punitive or emotional	for aggrieved individuals identified during a complaint
damages, and only provides for relief for the individual	investigation or compliance evaluation. 41 CFR 60
who filed the USERRA complaint with VETS. 38 USC	300.65(a)(1).
4322-4323; 20 CFR 1002.312-1002.314.	

#### 5. How do I file a complaint under USERRA and VEVRAA?

If you believe your employer violated USERRA, you can	If you believe your employer violated VEVRAA, you can
file a written USERRA complaint with the Veterans'	file a complaint with OFCCP. Instructions on how to file
Employment and Training Service (VETS) or initiate a	a complaint may be found at
private legal action in a court of law or another	https://www.dol.gov/agencies/ofccp/contact/file-
appropriate forum. VETS' on-line electronic complaint	<u>complaint</u> .
form may be found at <u>https://vets1010.dol.gov/</u> . VETS	
receives and investigates complaints, provides technical	
assistance to potential claimants, and takes actions in	
outreach to inform employees and employers of the	
rights, benefits, and obligations under USERRA. 38 USC	
4321-4322 & 4333; 20 CFR 1002.277, 1002.288 &	
1002.303-1002.304.	

## 6. Can I file a complaint under both USERRA and VEVRAA?

Yes. If you are eligible for relief under both statutes, VETS and OFCCP will both investigate your claims separately.

### 7. When do I have to file my complaint under USERRA and VEVRAA?

USERRA does not have a time limit for when to file a	VEVRAA complaints must be filed with OFCCP within
complaint with VETS. 38 USC 4327(b); 20 CFR 1002.311.	300 days of the date of the alleged violation, unless the
	time for filing is extended by OFCCP for good cause. 41
	CFR 60-300.61(a). Some examples of what might
	constitute good cause include the existence of some
	extraordinary circumstance that prohibited you from
	filing before the deadline such as a significant health
	issue, military deployment, incarceration, or possibly
	being unaware of the discrimination.

### 8. How will my complaint under USERRA and VEVRAA be investigated?

In a USERRA investigation, VETS will contact you within	Under VEVRAA, OFCCP will start a prompt investigation
five business days after you file your complaint and will	of your complaint. OFCCP investigators can interview
typically contact your employer after speaking with you	persons with knowledge of the issues raised in the
first. USERRA investigations must be completed within	complaint and collect documents relevant to the
90 days but may be extended with your approval. VETS	complaint from your employer, if necessary. If OFCCP

investigators can interview persons with personal	finds that a violation occurred, it will try to resolve the
knowledge and collect documents relevant to the	violation by holding conciliation discussions to bring the
investigation, and subpoena that information from	employer into compliance with VEVRAA and provide
employers, if necessary. If VETS finds that a violation	you with make-whole relief. If OFCCP finds that a
occurred, it will try to resolve your complaint by asking	violation has not been corrected, or determines that
the employer to comply with USERRA and provide you	enforcement rather than settlement is appropriate,
with make-whole relief. 38 USC 4322 & 4326; 20 CFR	OFCCP may pursue an enforcement action to seek
1002.289-1002.290.	appropriate relief for you and others involved. See 41
	CFR 60-300.61(d)-(e); 41 CFR 60-300.65.

#### 9. What if I don't agree with the investigation results of my USERRA or VEVRAA complaint?

If VETS is not able to satisfactorily resolve your USERRA	If you do not agree with OFCCP's determination, you
complaint, VETS will notify you of the results and your	can submit a request for a reconsideration. The
right to refer your case to the Department of Justice	Director or their designee shall provide prompt
(for claims against private employers, and local and	notification of their intent to reconsider, and their final
state governments), or to the Office of Special Counsel	determination after reconsideration. 41 CFR 60
(for claims against the federal government) to consider	300.61(e).
representing you in a USERRA lawsuit against your	
employer. They may also try to settle your case. The	
decision to represent you must be made within 60 days	
but may be extended with your approval. You can also	
file a private lawsuit in the appropriate court or forum	
as well. 38 USC 4322-4224; 20 CFR 1002.290-1002.292	
& 1002.303-1002-304.	

### 10. If I'm a federal contractor complying with VEVRAA, am I already in compliance with USERRA?

Not necessarily. Your responsibilities under **USERRA's** anti-discrimination provisions apply to a much larger group of veterans and uniformed service members, including all past, present, and potential service members, as well as members of the National Guard, the Public Health Service, the National Disaster Medical System, and certain other organizations. Additionally, you are required under **USERRA** to promptly reemploy returning service members who meet certain eligibility criteria, as well as provide other benefits. 38 USC 4311-4313 & 4316; 20 CFR 1002.5(o), 1002.18, 1002.32, 1002.150, 1002.163-1002.168, 1002.210, 1002-247 & 1002.259-1002.267; 41 CFR 60-300.1(c)(2)(i).

# 11. As a federal contractor employer, can I be investigated by both VETS and OFCCP and found to have violated both USERRA and VEVRAA, respectively, for the same actions?

Yes. The two statutes impose separate obligations on employers and each agency is authorized to investigate each complaint filed under the law for which they are responsible.

# 12. As a federal contractor employer, what are my obligations if I am found to have violated USERRA or VEVRAA?

Under **USERRA**, in addition to paying lost wages and Under **VEVRAA**, in addition to providing make-whole benefits, an employer can also be required to pay relief for complainants and other affected employees liquidated damages in an amount equal to that of lost or applicants, federal contractors and subcontractors wages and benefits for willful violations, reasonable can also be subject to injunctive relief and other court attorney fees, expert witness fees, and other litigation actions to enforce the government contract's equal expenses, as well be subject to injunctive relief, opportunity clause, have contract payments withheld temporary restraining orders, and contempt orders to to correct any violations, have the contract cancelled or vindicate fully the rights and benefits guaranteed under terminated in whole or part, and be debarred from USERRA. 38 USC 4323(d) & 4324(c); 20 CFR 1002.310 & receiving future government contracts. Debarment may 1002.312-1002.314. be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months but no more than three years. 41 CFR 60-300.65(a); 41 CFR 60-300.66.

# **13.** As a federal contractor employer, what can I do if I disagree with an alleged violation under USERRA or VEVRAA?

Under USERRA, if the Department of Justice or the	Under <b>VEVRAA,</b> if you, as a federal contactor employer,
complainant files a lawsuit in the appropriate federal	do not agree with OFCCP's findings, you will have an
district court, you will have the opportunity to answer	opportunity to participate in conciliation discussions
and defend against the alleged violations. 38 USC 4323;	with OFCCP prior to any enforcement action being
20 CFR 1002.292 & 1002.303-1002.305.	brought. In the event you are unable to reach an
	agreement with OFCCP to correct violations, OFCCP can
	seek an enforcement action to enjoin the violations,
	seek appropriate relief, and impose appropriate
	sanctions. In administrative enforcement proceedings,
	you will be provided an opportunity for a formal
	hearing. See 41 CFR 60-300.61(e)(4); 60-300.65; 60-
	300.66.

#### 14. Where can I obtain additional information?

For additional information about <b>USERRA</b> , visit the	For additional information about VEVRAA, visit the
Veterans' Employment & Training Service USERRA	Office of Federal Contract Compliance Programs
Website:	VEVRAA Website:
https://www.dol.gov/agencies/vets/programs/userra	https://www.dol.gov/agencies/ofccp/vevraa
and/or call DOL's toll-free information and help line,	and/or call OFCCP's toll-free help line, available
available Monday to Friday, except Federal holidays,	Monday to Friday, except Federal holidays, from
from 8:00am to 8:00pm (Eastern Time), at 1-866-4-	9:00am to 5:00pm (Eastern Time) at 1-800-397-6251 or
USA-DOL (1-866-487-2365).	DOL's toll-free information and help line, available
	Monday to Friday, except Federal holidays, from
	8:00am to 8:00pm (Eastern Time), at 1-866-4-USA-DOL
	(1-866-487-2365).

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