



U.S. Department of Labor
Veterans' Employment & Training Service



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 service in the uniformed services by eliminating the disadvantages to civilian employment which can result from such service; to minimize the disruption to the lives of persons performing uniformed service as well as to their employers, fellow employees, and communities, by providing for prompt reemployment 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.

VEVRAA prohibits certain employers who do business with the federal government, known as federal contractors and subcontractors, from discriminating in employment against protected veterans and requires these contractors to take affirmative action to recruit, hire, promote, and retain protected veterans. 38 USC 4212; 41 CFR 60-300.

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

USERRA protects past, present, and potential service members, including the National Guard, the Public Health Service, and the National Disaster Medical System from discrimination. **USERRA** confers additional rights and benefits onto service members including reemployment after uniformed service.

USERRA 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.

Veterans that fall into one or more of the following categories are covered by **VEVRAA**: (1) disabled veterans; (2) recently separated veterans; (3) active duty wartime or campaign badge veterans; or (4) Armed Forces service medal veteran. These categories are defined at 38 USC 4212(a)(3)(A) and 41 CFR 60-300.2 and in OFCCP's ["Am I a Protected Veteran" infographic](#).

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

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

3. What actions are prohibited by USERRA or VEVRAA?

<p>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.</p> <p>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.</p> <p>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.</p>	<p>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).</p> <p>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).</p>
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4. What remedies would I be entitled to under USERRA and/or VEVRAA?

<p>USERRA provides for make-whole relief, including lost wages, restoration of pension benefits, employment or reemployment with the employer, and injunctive relief.</p>	<p>If there is a discrimination violation of VEVRAA, the Office of Federal Contract Compliance Programs (OFCCP) may seek back pay and interest and other make whole relief (such as reinstatement or a job offer)</p>
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<p>USERRA does not provide for punitive or emotional damages, and only provides for relief for the individual who filed the USERRA complaint with VETS. 38 USC 4322-4323; 20 CFR 1002.312-1002.314.</p>	<p>for aggrieved individuals identified during a complaint investigation or compliance evaluation. 41 CFR 60 300.65(a)(1).</p>
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5. How do I file a complaint under USERRA and VEVRAA?

<p>If you believe your employer violated USERRA, you can file a written USERRA complaint with the Veterans’ Employment and Training Service (VETS) or initiate a private legal action in a court of law or another appropriate forum. VETS’ on-line electronic complaint form may be found at https://vets1010.dol.gov/. 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.</p>	<p>If you believe your employer violated VEVRAA, you can file a complaint with OFCCP. Instructions on how to file a complaint may be found at https://www.dol.gov/agencies/ofccp/contact/file-complaint.</p>
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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?

<p>USERRA does not have a time limit for when to file a complaint with VETS. 38 USC 4327(b); 20 CFR 1002.311.</p>	<p>VEVRAA complaints must be filed with OFCCP within 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.</p>
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8. How will my complaint under USERRA and VEVRAA be investigated?

<p>In a USERRA investigation, VETS will contact you within five business days after you file your complaint and will typically contact your employer after speaking with you first. USERRA investigations must be completed within 90 days but may be extended with your approval. VETS</p>	<p>Under VEVRAA, OFCCP will start a prompt investigation of your complaint. OFCCP investigators can interview persons with knowledge of the issues raised in the complaint and collect documents relevant to the complaint from your employer, if necessary. If OFCCP</p>
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<p>investigators can interview persons with personal knowledge and collect documents relevant to the investigation, and subpoena that information from employers, if necessary. If VETS finds that a violation occurred, it will try to resolve your complaint by asking the employer to comply with USERRA and provide you with make-whole relief. 38 USC 4322 & 4326; 20 CFR 1002.289-1002.290.</p>	<p>finds that a violation occurred, it will try to resolve the violation by holding conciliation discussions to bring the employer into compliance with VEVRAA and provide you with make-whole relief. If OFCCP finds that a violation has not been corrected, or determines that enforcement rather than settlement is appropriate, OFCCP may pursue an enforcement action to seek appropriate relief for you and others involved. See 41 CFR 60-300.61(d)-(e); 41 CFR 60-300.65.</p>
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9. What if I don't agree with the investigation results of my USERRA or VEVRAA complaint?

<p>If VETS is not able to satisfactorily resolve your USERRA complaint, VETS will notify you of the results and your right to refer your case to the Department of Justice (for claims against private employers, and local and state governments), or to the Office of Special Counsel (for claims against the federal government) to consider 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.</p>	<p>If you do not agree with OFCCP's determination, you can submit a request for a reconsideration. The Director or their designee shall provide prompt notification of their intent to reconsider, and their final determination after reconsideration. 41 CFR 60 300.61(e).</p>
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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?

<p>Under USERRA, in addition to paying lost wages and benefits, an employer can also be required to pay liquidated damages in an amount equal to that of lost wages and benefits for willful violations, reasonable attorney fees, expert witness fees, and other litigation expenses, as well be subject to injunctive relief, temporary restraining orders, and contempt orders to vindicate fully the rights and benefits guaranteed under USERRA. 38 USC 4323(d) & 4324(c); 20 CFR 1002.310 & 1002.312-1002.314.</p>	<p>Under VEVRAA, in addition to providing make-whole relief for complainants and other affected employees or applicants, federal contractors and subcontractors can also be subject to injunctive relief and other court actions to enforce the government contract’s equal opportunity clause, have contract payments withheld to correct any violations, have the contract cancelled or terminated in whole or part, and be debarred from receiving future government contracts. Debarment may 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.</p>
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13. As a federal contractor employer, what can I do if I disagree with an alleged violation under USERRA or VEVRAA?

<p>Under USERRA, if the Department of Justice or the complainant files a lawsuit in the appropriate federal district court, you will have the opportunity to answer and defend against the alleged violations. 38 USC 4323; 20 CFR 1002.292 & 1002.303-1002.305.</p>	<p>Under VEVRAA, if you, as a federal contractor employer, do not agree with OFCCP’s findings, you will have an opportunity to participate in conciliation discussions with OFCCP prior to any enforcement action being 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.</p>
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14. Where can I obtain additional information?

<p>For additional information about USERRA, visit the Veterans’ Employment & Training Service USERRA Website: https://www.dol.gov/agencies/vets/programs/userra and/or call 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).</p>	<p>For additional information about VEVRAA, visit the Office of Federal Contract Compliance Programs VEVRAA Website: https://www.dol.gov/agencies/ofccp/vevraa and/or call OFCCP’s toll-free help line, available Monday to Friday, except Federal holidays, from 9:00am to 5:00pm (Eastern Time) at 1-800-397-6251 or 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).</p>
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This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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