

DEPARTMENT OF LABOR**Veterans' Employment and Training Service****20 CFR Part 1002**

[Docket No. VETS-U-04]

RIN 1293-AA14

Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994; Correction**AGENCY:** Veterans' Employment and Training Service (VETS), Labor.**ACTION:** Amendment to final rule.

SUMMARY: In this rulemaking, the Veterans' Employment and Training Service (VETS) is correcting and consolidating the text in parts A and B of the appendix to 20 CFR part 1002 ("Notice of Your Rights Under USERRA"). VETS published the appendix on March 10, 2005 in response to the Veterans Benefits Improvement Act of 2004 (VBIA). The VBIA amended the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) by requiring employers to notify affected employees of the rights, benefits, and obligations of employees and employers under USERRA. As published, the text of the required USERRA rights notice included information about a temporary demonstration project established under the VBIA that called for VETS to transfer to the Office of Special Counsel some claims brought against Federal executive agencies. The demonstration project ended on December 31, 2007.

This rulemaking is therefore deleting this outdated reference from the text of the USERRA rights notice. In addition, this rulemaking is consolidating the text in parts A and B of the required USERRA rights notice to eliminate the need for separate notices for Federal and non-Federal agency employers. This rulemaking does not require employers to replace the notices currently in use because, even without this correction and consolidation, the current notices comply with the USERRA employee-notification requirements.

DATES: *Effective Date:* The correction issued under this rulemaking is effective on October 27, 2008.

FOR FURTHER INFORMATION CONTACT: For information about this correction notice, contact Mr. Kenan Torrans, Office of Operations and Programs, Veterans' Employment and Training Service, U.S. Department of Labor, Room S-1316, 200 Constitution Ave., NW., Washington, DC 20210. Telephone: 202-693-4731

(this is not a toll-free number); *electronic mail:* torrans-william@dol.gov. For press inquiries, contact Mr. Michael Biddle, Office of Public Affairs, U.S. Department of Labor, Room S-1032, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-693-5051 (this is not a toll-free number); *electronic mail:* biddle.michael@dol.gov. Individuals with hearing or speech impairments may access these telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. 4301-4334) provides employment and reemployment rights for members of the uniformed services, including veterans and members of the Reserve and National Guard. Under USERRA, service members who leave their civilian jobs for military service can perform their duties with assurance that they will be able to return to their jobs with the same pay, benefits, and status they would have attained had they not been away on duty. USERRA also prohibits employers from discriminating against these individuals in employment because of their military service.

The Veterans Benefits Improvement Act of 2004 (VBIA), Public Law No. 108-454 (Dec. 10, 2004), amended several provisions of USERRA. In part, the VBIA required that:

Each employer shall provide to persons entitled to rights and benefits under [USERRA] a notice of the rights, benefits, and obligations of such persons and such employers under [USERRA].

(38 U.S.C. 4334.) The VBIA required the Department of Labor to make available to employers the text of the USERRA rights notice. DOL, through the Veterans' Employment and Training Service (VETS), published an interim final rule in the **Federal Register** providing the text of the USERRA rights notice on March 10, 2005 (70 FR 12106), and published the final rule on December 19, 2005 (70 FR 75313).

The VBIA also established a demonstration project under which VETS would transfer about half of the USERRA claims brought against Federal executive agencies to the Office of Special Counsel (OSC) for investigation and resolution. The demonstration project began on February 8, 2005, and ended on December 31, 2007.

Because of OSC's role in investigating and resolving certain complaints against

Federal agency employers during the demonstration project, VETS made available two separate texts of the USERRA rights notice—one for use by private-sector and State-government employers (Text A), and one for Federal executive agencies (Text B). The USERRA rights notice used by Federal executive agencies expressly referenced OSC's role in investigating and resolving certain complaints against such agencies during the demonstration project:

In some cases involving USERRA claims against Federal executive agencies, a complaint filed with VETS before September 30, 2007 may be transferred to the Office of Special Counsel for investigation and resolution pursuant to a demonstration project established under Section 204 of the Veterans Benefits Improvement Act of 2004, Public Law No. 108-454 (Dec. 10, 2004).

- If VETS is unable to resolve a complaint that has not been transferred for investigation under the demonstration project, you may request that your case be referred to the Office of Special Counsel for representation.

Because the demonstration project ended by operation of law on December 31, 2007, VETS, through this rulemaking, is correcting the Federal USERRA rights notice by deleting the reference to the demonstration project. VETS is also consolidating the text relating to enforcement of claims in parts A and B of the USERRA rights notice because there is no longer a need for separate notices for Federal and non-Federal agency employers. However, posting one of the original USERRA rights notices published on December 19, 2005, will continue to comply with the USERRA notice requirement because the conditional language of the reference to the demonstration project does not affect the remaining substantive information in the Federal USERRA rights notice. The text of either the original or corrected Federal USERRA rights notice will meet the requirements of the law.

II. Exemption From Notice-and-Comment Procedures

VETS has determined that the correction made by this rulemaking is not subject to the procedures for public notice-and-comment rulemaking specified under the Administrative Procedure Act because the correction is a general statement of policy under 5 U.S.C. 553(b)(3)(A), and does not affect the substantive requirements or coverage of 20 CFR 1002 ("Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994"). This correction notice does not modify or revoke existing rights and obligations of employees or

employers, and it does not establish new rights and obligations (see *Public Citizen v. Department of State*, 276 F.3d 634, 640–41 (D.C. Cir. 2002); *American Hospital Ass'n v. Bowen*, 834 F.2d 1037, 1047 (D.C. Cir. 1987)). Under this rulemaking, VETS is merely consolidating and correcting conditional, outdated information contained in the appendix to its USERRA regulations, and permitting employers to retain the current, uncorrected notices that inform employees of the rights, benefits, and obligations of employees and employers under USERRA.

This rulemaking imposes no economic burden on employers subject to USERRA employee-notification requirements because covered employers can comply with these requirements by posting in the workplace the text of the original USERRA rights notice provided by VETS in a previous rulemaking. Further, this rule results in no burdens under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; September 30, 1993).

List of Subjects in 20 CFR Part 1002

Administrative practice and procedure, Employment, Enforcement, Labor, Veterans, Working conditions.

Authority: 38 U.S.C. 4331(a), 4334(b); Secretary of Labor's Order No. 03–2004.

Signed at Washington, DC, on October 9, 2008.

John M. McWilliam,

Deputy Assistant Secretary of Labor for Veterans' Employment and Training.

■ Based on the explanations provided by the preamble, VETS is amending 20 CFR part 1002 as follows:

PART 1002—REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: Section 4331(a) of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4331(a) (Pub. L. 103–353, 108 Stat. 3150).

■ 2. Revise the Appendix to part 1002 to read as follows:

Appendix to Part 1002—Notice of Your Rights Under USERRA

Pursuant to 38 U.S.C. 4334(a), each employer shall provide to persons entitled to

rights and benefits under USERRA a notice of the rights, benefits, and obligations of such persons and such employers under USERRA. The requirement for the provision of notice under this section may be met by posting the following notice where employers customarily place notices for employees. Posting one of the original notices published in 70 FR 75316 (Dec. 19, 2005) will also satisfy this requirement. The following text is provided by the Secretary of Labor to employers pursuant to 38 U.S.C. 4334(b).

Text for Use by All Employers

Your Rights Under USERRA

A. The Uniformed Services Employment and Reemployment Rights Act

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

B. Reemployment Rights

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- You ensure that your employer receives advance written or verbal notice of your service;
- You have five years or less of cumulative service in the uniformed services while with that particular employer;
- You return to work or apply for reemployment in a timely manner after conclusion of service; and
- You have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

C. Right To Be Free From Discrimination and Retaliation

If you:

- Are a past or present member of the uniformed service;
- Have applied for membership in the uniformed service; or
- Are obligated to serve in the uniformed service; then an employer may not deny you
 - Initial employment;
 - Reemployment;
 - Retention in employment;
 - Promotion; or
 - Any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

D. Health Insurance Protection

- If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your

dependents for up to 24 months while in the military.

- Even if you do not elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

E. Enforcement

- The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.

For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1–866–4–USA–DOL or visit its Web site at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.

- If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.

- You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the Internet at this address: <http://www.dol.gov/vets/programs/userra/poster.htm>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees. U.S. Department of Labor, Veterans' Employment and Training Service, 1–866–487–2365.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1041]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Witt Penn Bridge across the Hackensack River, mile 3.1, at Jersey City, New Jersey. Under this temporary deviation the bridge may remain in the closed position for one