

The Federal Reemployment Statute Has Had many Names

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

[Update on Sam Wright](#)

1.8—Relationship between USERRA and other laws/policies

8.0—Veterans' preference

Q: What is the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA)? How is it different from the Uniformed Services Employment and Reemployment Rights Act (USERRA)?

A: As I have explained in footnote 2 and in Law Review 15067 (August 2015), Congress originally enacted the reemployment statute in 1940, as part of the Selective Training and Service Act (STSA), the law that led to the drafting of more than ten million young men (including my late father) for World War II. For the first 34 years, from 1940 to 1974, the federal reemployment statute was part of the draft law, although the reemployment statute applied to persons who

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1800 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1600 of the articles.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

voluntarily enlisted as well as those who were drafted. The draft law had several formal names, including the STSA, the Universal Military Training & Service Act (UMTSA), and the Selective Service Act (SSA).

In 1973, Congress abolished the draft and established the all-volunteer military. In 1974, Congress enacted the VEVRAA, which recodified the reemployment statute and moved it from title 50 (war and national defense) to title 38 (veterans' benefits) of the United States Code.

VEVRAA also made substantive amendments to the reemployment statute. The most important change was to make the law apply to state and local governments for the first time.³ VEVRAA was the formal name of the reemployment statute from 1974 until 1994, when Congress enacted USERRA.

VEVRAA also enacted a new section in title 38 of the United States Code, section 2012. That section requires federal contractors to take affirmative action steps to employ and advance in employment certain veterans. Several years later, Congress reorganized the numbering system for sections in title 38, and section 2012 became 4212. Here is the entire text of that section:

(a)

(1) Any contract in the amount of \$100,000 or more entered into by any department or agency of the United States for the procurement of personal property and nonpersonal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States take affirmative action to employ and advance in employment qualified covered veterans. This section applies to any subcontract in the amount of \$100,000 or more entered into by a prime contractor in carrying out any such contract.

(2) In addition to requiring affirmative action to employ such qualified covered veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the Secretary of Labor shall prescribe regulations requiring that—

(A) each such contractor for each such contract shall immediately list all of its employment openings with the appropriate employment service delivery system (as defined in section 4101(7) of this title), and may also list such openings with one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America's Job Bank (or any additional or subsequent national electronic job bank established by the Department of Labor), except that the contractor may exclude openings for executive and senior management positions and positions

³ The reemployment statute has applied to the Federal Government and to private employers since 1940. It has applied to state and local governments since 1974.

which are to be filled from within the contractor's organization and positions lasting three days or less;

(B) each such employment service delivery system shall give such qualified covered veterans priority in referral to such employment openings; and

(C) each such employment service delivery system shall provide a list of such employment openings to States, political subdivisions of States, or any private entities or organizations under contract to carry out employment, training, and placement services under chapter 41 of this title.

(3) In this section:

(A) The term "covered veteran" means any of the following veterans:

(i) Disabled veterans.

(ii) Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized.

(iii) Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order No. 12985 (61 Fed. Reg. 1209).

(iv) Recently separated veterans.

(B) The term "qualified", with respect to an employment position, means having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.

(b) If any veteran covered by the first sentence of subsection (a) believes any contractor of the United States has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

(c) The Secretary of Labor shall include as part of the annual report required by section 4107(c) of this title the number of complaints filed pursuant to subsection (b) of this section, the actions taken thereon and the resolutions thereof. Such report shall also include the number of contractors listing employment openings, the nature, types, and number of positions listed and the number of veterans receiving priority pursuant to subsection (a)(2)(B).

(d)

(1) Each contractor to whom subsection (a) applies shall, in accordance with regulations which the Secretary of Labor shall prescribe, report at least annually to the Secretary of Labor on—

(A) the number of employees in the workforce of such contractor, by job category and hiring location, and the number of such employees, by job category and hiring location, who are qualified covered veterans;

(B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are qualified covered veterans; and

(C) the maximum number and the minimum number of employees of such contractor during the period covered by the report.

(2) The Secretary of Labor shall ensure that the administration of the reporting requirement under paragraph (1) is coordinated with respect to any requirement for the contractor to make any other report to the Secretary of Labor.

(3) The Secretary of Labor shall establish and maintain an Internet website on which the Secretary of Labor shall publicly disclose the information reported to the Secretary of Labor by contractors under paragraph (1).⁴

Q: How is section 4212 (VEVRAA) enforced?

A: This provision is enforced by the Office of Federal Contract Compliance Programs (OFCCP), in the United States Department of Labor (DOL). The OFCCP enforces this section by debarring or threatening to debar contractors that fail to accord veterans' preference to eligible veterans.

Q: Does section 4212 create a private right of action for a veteran who claims that his or her veterans' preference rights have been violated?

A: No. "Under 38 U.S.C. 2012 [now 4212], a Vietnam veteran did not have a private right of action against a private government contractor for failing to comply with the hiring provisions of section 2012 [now 4212], since a review of the legislative intent indicates Congress intended that enforcement and supervision of affirmative action hiring policy of section 2012 [now 4212] is left to the DOL to which the veteran could forward a complaint."⁵

Q: Does section 4212 require federal contractors to give preference to members of the National Guard or Reserve when hiring?

⁴ 38 U.S.C. 4212.

⁵ *Barron v. Nightingale Roofing, Inc.*, 842 F.2d 20 (1st Cir. 1988). See also *Harris v. Adams*, 873 F.2d 929 (6th Cir. 1989).

A: No. I wish that it did. That would require a statutory amendment to section 4212.

Q: Does USERRA require federal contractors or other employers to provide a preference to National Guard and Reserve members?

A: No. Section 4311 of USERRA makes it unlawful for employers (federal, state, local, or private sector) to *discriminate* against National Guard or Reserve members, but USERRA does not require employers to give a preference to veterans or Reserve/Guard personnel.

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ROA is almost a century old—it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

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