TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION 1

I. THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA)—PL 103-353 1
- A. LEGISLATIVE HISTORY 1
  - 1. Vietnam Era Veterans' Readjustment Assistance Act of 1974 1
  - 2. Veterans' Reemployment Rights Act and USERRA 2
  - 3. USERRA Amendments 2
- B. PURPOSE 3
  - 1. USERRA 3
  - 2. Statutory Structure 4

II. THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1998 (VEOA)—PL 105-339 5
- A. LEGISLATIVE HISTORY 5
  - 1. VEOA Statutory Structure 7

CHAPTER 2: REEMPLOYMENT COVERAGE—USERRA 9

I. TYPES OF SERVICE 9

II. INDIVIDUALS 9
- A. COVERED INDIVIDUALS 9
- B. EXCLUDED INDIVIDUALS 10
  - 1. Non-Veteran Preference Eligibles 10
  - 2. Individuals to Whom a Benefit Does Not Apply 10
  - 3. Individuals Who Did Not Receive an Honorable Discharge 10
  - 4. TSA Screeners and Their Supervisors 11
  - 5. Individuals Who Have Waived USERRA Coverage 11
    - a. Abandonment of Civil Service Career 11
    - b. Settlement 12
    - c. Untimely Filing 12
    - d. Sanctions 13
- C. REEMPLOYMENT ELIGIBILITY 13

III. EMPLOYERS 14
- A. COVERED AGENCIES 14
- B. EXCLUDED AGENCIES 15

CHAPTER 3: ANTI-DISCRIMINATION AND RETALIATION—USERRA 17

I. STANDARD FOR USERRA DISCRIMINATION CLAIMS 17
- A. PERSONS COVERED 17
  - 1. Protected Individuals 17
    - a. Probationary Employees 18
    - b. Non-Applicants 18
    - c. Uniformed Members of the Public Health Service 18
    - d. Title 38 Employees 19

e. Term Employees 19
f. Individuals Alleging Retaliation 20
B. EXCLUDED INDIVIDUALS 20
1. Non-Veteran Preference Eligibles 20
2. Individuals Who Have Waived USERRA Coverage 20
a. Abandonment of Civil Service Career 20
b. Settlement of Claims 21
C. POSITIONS COVERED 21
1. Benefit of Employment 21
D. EMPLOYEE'S BURDEN OF PROOF 23
E. EMPLOYER'S BURDEN OF PROOF 24
II. RETALIATION 25
A. COVERED PERSONS 25
B. COVERED POSITIONS 25
C. EMPLOYEE'S BURDEN OF PROOF 25
D. EMPLOYER'S BURDEN OF PROOF 26
III. DISCRIMINATION AND OTHER STATUTES 26
A. OTHER CLAIMS OF DISCRIMINATION 26
B. COLLECTIVE BARGAINING AGREEMENT 27
C. 5 USC § 6323 27
D. USERRA'S PREDECESSOR STATUTE, VRRA (CHAPTER 43 OF VEVRAA) 28
E. VEOA 28
F. TITLE 5 28
G. TITLE 38 28
H. THE BARRING ACT, 31 USC § 3702 29
I. THE BACK PAY ACT, 5 USC § 5596 29

CHAPTER 4: REQUIREMENTS FOR RETURN TO CIVILIAN EMPLOYMENT—USERRA 31

I. NOTICE 31
II. LENGTH OF ABSENCE 31
A. NOT TO EXCEED FIVE YEARS 31
B. EXCEPTIONS TO THE FIVE-YEAR LIMITATION 32
III. TIME LIMITS TO APPLY FOR OR REPORT TO REEMPLOYMENT 32
A. ABSENCE OF 30 DAYS OR LESS 32
B. ABSENCE OF MORE THAN 30 DAYS, BUT LESS THAN 181 DAYS 33
C. ABSENCE OF MORE THAN 180 DAYS 33
D. ABSENCE CAUSED BY ILLNESS OR INJURY OCCURRING OR AGGRAVATED DURING MILITARY SERVICE 33
E. FAILURE TO REPORT WITHIN THE ESTABLISHED TIME LIMITS 33
IV DOCUMENTATION OF ABSENCE 33
A. REQUIRED DOCUMENTATION 33
B. DOCUMENTATION NOT AVAILABLE AT THE TIME OF REEMPLOYMENT 34
1. Delay or Denial of Reemployment 34
2. Discharge 34
C. DOCUMENTATION FOR ABSENCE OF MORE THAN 90 DAYS 34

V. REEMPLOYMENT RIGHTS AND OTHER STATUTES 34
A. 5 USC § 7121—COLLECTIVE BARGAINING AGREEMENT 34
B. 5 USC § 6323 34
C. 5 USC § 3502 35
D. USERRA'S PREDECESSOR STATUTE, VRRA (CHAPTER 43 OF VEVRAA) 35
E. VEOA 36
F. TITLE 5 36
G. TITLE 38 36

CHAPTER 5: RIGHTS, BENEFITS, AND OBLIGATIONS OF PERSONS ABSENT FROM EMPLOYMENT DUE TO SERVICE IN THE UNIFORMED SERVICES—USERRA ... 37

I. GENERAL BENEFITS 37
A. TYPE OF LEAVE FOR PERSONS COVERED BY USERRA 38
1. Employees' Entitlement to Leave 38
2. Agency's Obligation to Grant Leave 39
a. Charging Military Leave 39
B. BENEFITS AND RIGHTS OF PERSONS ABSENT FROM EMPLOYMENT FOR MILITARY SERVICE COVERED BY USERRA 39
1. Seniority and Status 39
2. Accrued Leave 40
a. Accrual of Benefits 40
b. Computation of Accrual of Leave 40
3. Health Insurance Benefits 41
4. Back Pay Differential and Out-of-Schedule Premium Pay 41
5. Pension Benefits 42
a. Federal Employees' Retirement Systems (FERS) 42
b. Civil Service Retirement Systems (CSRS) 42
c. Litigation of Pension Benefits 42
d. Cost of Benefits 43
6. Consideration for Promotion 43
7. Correction of Personnel Records 43
8. Renewal of a Term Appointment and Conversion to a Permanent Appointment 44
9. Law Enforcement Commission and Freedom From Hostile Work Environment 44
C. BENEFITS NOT COVERED BY USERRA 44
1. Benefits in Excess of Those Received by Non-Veterans 44
2. Holiday Pay 45
3. GI Bill Benefits 45
II. STATUS AS A CIVILIAN EMPLOYEE DURING ABSENCE 45
A. LOSS OF USERRA REEMPLOYMENT RIGHTS AND BENEFITS 45
1. USERRA Rights Apply Only to Those Engaged in Non-Career Military Service 45
2. USERRA Only Applies to Those Who Were Honorably Discharged 46
3. USERRA Rights May Be Waived 46

B. REQUIRED NOTICE OF USERRA RIGHTS 46

CHAPTER 6: USERRA AND MILITARY LEAVE 47

I. MILITARY LEAVE AS A BENEFIT OF EMPLOYMENT 47
A. IMPROPERLY CHARGED MILITARY LEAVE CAN BE RECOVERED RETROACTIVELY 47
B. CORRECTED LEAVE RECORDS ARE A BENEFIT OF EMPLOYMENT 48
C. WAIVER 48
D. ENFORCEMENT OF IMPROPERLY CHARGED LEAVE MAY BE BASED ON AGENCY POLICY 48
1. U.S. Postal Service 48
2. Department of Veterans Affairs and Title 38 Employees 49
3. Federal Aviation Administration 49
E. MILITARY LEAVE AND DISCRIMINATION 49
II. BURDEN OF PROOF FOR *BUTTERBAUGH* CLAIMS 50
A. APPELLANT'S BURDEN 50
1. Elements 50
2. Specific Evidence Required 50
3. Insufficient Evidence 50
B. AGENCY'S REBUTTAL 51
III. REMEDIES FOR *BUTTERBAUGH* VIOLATIONS 51
A. COMPLIANCE ORDER 51
B. RESTORATION OF LEAVE 52
C. MONETARY COMPENSATION 52
D. ATTORNEY FEES, EXPERT WITNESS FEES, AND OTHER LITIGATION EXPENSES 52

CHAPTER 7: RIGHTS, BENEFITS, AND OBLIGATIONS OF THE RETURNING VETERAN OR SERVICE MEMBER—USERRA 53

I. REEMPLOYMENT POSITIONS 53
A. FOR ABSENCES DUE TO MILITARY SERVICE UP TO AND INCLUDING 90 DAYS 53
B. FOR ABSENCES OF MORE THAN 90 DAYS 53
1. Status 54
a. Replacements and Position "Unavailability" 54
b. "Like" Positions 54
2. Escalator Principle 56
a. Definition 56
b. Employer's Obligation 56
c. Requirements for Award of Escalator Position 57
d. Agency's Burden of Proof 57
C. FAILURE TO QUALIFY FOR REASONS OTHER THAN DISABILITY INCURRED OR AGGRAVATED DURING MILITARY SERVICE 58
D. PRIORITY OF REEMPLOYMENT 58
II. WHEN REEMPLOYMENT IS NOT REQUIRED 58
III. THE EFFECT OF SERVICE-CONNECTED DISABILITY ON REEMPLOYMENT RIGHTS 59

A. REASONABLE ACCOMMODATIONS 59
B. REEMPLOYMENT POSITIONS 60
IV. THE EFFECT OF NONSERVICE-CONNECTED DISABILITY ON EMPLOYMENT RIGHTS 60
V. REEMPLOYMENT AND THE FEDERAL GOVERNMENT 61
A. SAME REEMPLOYMENT RESPONSIBILITIES AS THE PRIVATE SECTOR 61
B. FEDERAL AGENCIES ADDITIONAL REEMPLOYMENT RESPONSIBILITIES 61
1. Notification of the Office of Personnel Management (OPM) ... 61
2. Reemployment Rights for Employees of the Legislative and Judicial Branches of Government, and National Guard Technicians Employed Under 32 USC § 709 61
3. Reemployment Obligations of Intelligence Agencies 62
VI. EMPLOYMENT RETENTION RIGHTS 62
A. TIME LIMITS FOR REQUIRED RETENTION 62
B. DISCHARGE FOR CAUSE 63
C. DISCHARGE OR LAYOFF FOR LEGITIMATE, NONDISCRIMINATORY REASONS 63
D. REDUCTION IN FORCE 63

CHAPTER 8: ROLE OF THE DEPARTMENT OF LABOR AND SPECIAL COUNSEL—USERRA 65

I. CHOICE OF PROCEDURE 65
A. DEPARTMENT OF LABOR 65
B. MSPB VERSUS DEPARTMENT OF LABOR 65
II. DEMONSTRATION PROJECT 66
III. FILING A COMPLAINT WITH THE DEPARTMENT OF LABOR, VETERANS' EMPLOYMENT AND TRAINING SERVICE (DOL-VETS) 66
A. HOW TO FILE 66
B. WHO MAY FILE 67
C. CONTENTS OF THE COMPLAINT 67
IV. DOL INVESTIGATION 67
A. AUTHORITY TO INTERVIEW WITNESSES AND PROCURE DOCUMENTS 67
B. SUBPOENA POWER 67
C. EXCEPTIONS 67
D. FINDINGS 68
1. Efforts to Resolve Complaint 68
2. Notice to Complainant 68
3. Referral to Special Counsel 68
E. ROLE OF SPECIAL COUNSEL 68
1. Investigation 68
2. Representation 68
F. DEPARTMENT OF LABOR REPORTS 68
V. APPEAL RIGHTS 69
A. APPEALS OF EMPLOYEES OF FEDERAL INTELLIGENCE AGENCIES ... 69
B. APPEALS OF EMPLOYEES OF OTHER FEDERAL AGENCIES 69

CHAPTER 9: APPEALS TO THE MERIT SYSTEMS PROTECTION BOARD—USERRA 71

I. WHO MAY FILE AN APPEAL 71
A. REEMPLOYMENT 71
1. Probationary Employees 71
2. Individuals Serving in Uniformed Service 71
3. Employees of Federal Contractors 71
4. Employees Not Eligible to File an Appeal 71
a. Non-Veteran Preference Eligibles 71
b. Non-Receipt of Honorable Discharge 72
c. TSA Screeners and Supervisors 72
d. Those Who Waive Coverage 72
e. Employees of Federal Intelligence Agencies 72
B. DISCRIMINATION AND RETALIATION 72
1. Probationary Employees and Nonselection Cases 73
2. Individual Serving in Uniformed Service 73
3. Title 38 Employees 73
4. Term Employees 73
5. Any Person May File a Retaliation Claim 73
6. Employees Not Eligible to File a Discrimination Appeal 73
a. Non-Veteran Preference Eligibles 73
b. TSA Screeners and Supervisors 74
c. Waiver 74
d. Employees of Federal Intelligence Agencies 74
II. CONTENTS OF THE APPEAL 74
A. DEFINITION OF APPEAL AND REQUIREMENTS 74
B. STRICT COMPLIANCE NOT REQUIRED 75
C. BOARD CONSTRUCTION OF USERRA APPEAL 76
III. JURISDICTION 76
A. CHOICE OF PROCEDURE AND EXHAUSTION OF ADMINISTRATIVE REMEDIES 76
B. TIME LIMITS—TIME LIMIT FOR FILING A USERRA APPEAL 77
1. USERRA Reemployment Cases 77
2. USERRA Discrimination Cases 78
C. BURDENS OF PROOF CONCERNING JURISDICTION AND STANDING 79
1. Appellant's Burden of Proof 79
2. Standing 79
3. Reemployment Cases 80
4. Discrimination Cases 81
a. Elements of 38 USC § 4311 82
b. Five-year Limit on Uniformed Service 82
c. Disparate Treatment 82
c. Disparate Impact 83
d. Retaliation 83
e. Employer's Burden of Proof—The "But-For" Test 83
D. ADMINISTRATIVE JUDGE'S RESPONSIBILITY TO PROVIDE NOTICE ... 84

1. Notice of Jurisdictional Requirements 84
a. Specific Notice 84
b. Weak Allegations Sufficient 84
c. Late Chapter 75 Appeal With USERRA Allegations 84
2. Notice of Substantive Requirements 85
IV. DISMISSALS FOR OTHER THAN LACK OF JURISDICTION 85
A. DISMISSAL WITHOUT PREJUDICE 85
B. DISMISSAL FOR FAILURE TO PROSECUTE 86
C. DISMISSAL FOR FAILURE TO STATE A CLAIM 86
D. DISMISSAL FOR MOOTNESS 86
E. DISMISSAL FOR *RES JUDICATA* 87
F. DISMISSAL FOR COLLATERAL ESTOPPEL 87
V. RETROACTIVE APPLICATION 87
A. REEMPLOYMENT RIGHTS AND DENIAL OF BENEFITS 88
1. Reemployment Rights 88
2. Denial of Benefits 89
B. DISCRIMINATION AND RETALIATION 90
VI. REPRESENTATION 90
VII. BURDENS OF PROOF 90
A. REEMPLOYMENT CASES 90
B. DISCRIMINATION CASES 91
VIII. HEARING 92
IX. SANCTIONS 92
X. REMEDIES 93
A. COMPLIANCE ORDER 93
B. LOST WAGES AND BENEFITS 93
C. ATTORNEY FEES AND COSTS OF LITIGATION 94
D. SANCTIONS 95
XI. USERRA AND OTHER APPEALABLE ACTIONS 95
A. VEOA 95
B. NEGOTIATED GRIEVANCE PROCEDURE 95
C. DISCRIMINATION 95
XII. JUDICIAL REVIEW OF USERRA CLAIMS AGAINST FEDERAL EXECUTIVE AGENCIES 96
A. APPEAL TO THE FEDERAL CIRCUIT 96
1. Time Limits 96
2. Scope of Review 96
3. Procedure 96
4. Necessary Parties 97

CHAPTER 10: VEOA COVERAGE 99

I. INDIVIDUALS COVERED 100
A. PREFERENCE ELIGIBLES 100
1. Definition of "Veteran" as a Preference Eligible 100
2. Definition of "Disabled Veteran" as a Preference Eligible 100
3. Definition of Other "Preference Eligibles" 102
B. VETERANS COMPLETING SUBSTANTIALLY THREE YEARS SERVICE ON ACTIVE DUTY AND HONORABLE DISCHARGE 102

C. PROBATIONARY EMPLOYEES 102
D. CURRENT FEDERAL EMPLOYEES & THOSE OUTSIDE THE FEDERAL WORKFORCE 102
E. PREFERENCE ELIGIBLES WHO HAVE LEFT CIVIL SERVICE 103
F. DEFINITION OF NON-PREFERENCE ELIGIBLE "VETERAN" 103
II. INDIVIDUALS EXCLUDED FROM VEOA COVERAGE 104
A. THOSE NOT DEFINED BY STATUTE 104
B. HEALTH CARE PROFESSIONALS 104
C. DEPARTMENT OF TRANSPORTATION EMPLOYEES 104
D. EMPLOYEES OF THE WORLD BANK 105
E. MEDIATORS AND CONCILIATORS OF THE FEDERAL MEDIATION AND CONCILIATION SERVICE 105
F. THOSE EXCLUDED BY 5 USC § 2108(3)(G) 105
III. AGENCIES COVERED BY VEOA 105
IV. AGENCIES EXCLUDED FROM VEOA 106
V. POSITIONS COVERED 106
VI. STATUTES COVERED 107
A. STATUTES LISTED IN 5 USC § 2302 107
B. OTHER STATUTES RELATING TO VETERANS' PREFERENCE 107
VII. INDEPENDENT CONTRACTORS 108
VIII. LEGISLATIVE AND JUDICIAL BRANCH EMPLOYEES 109
A. LEGISLATIVE BRANCH 109
1. Statutory Rights of Covered Employees 109
2. Remedies 109
3. Procedure for Enforcement 109
a. Counseling 109
b. Mediation 110
c. Election 110
d. Filing a Formal Administrative Complaint 110
e. Petition for Review 110
f. Judicial Review 111
B. JUDICIAL BRANCH EMPLOYEES 111

CHAPTER 11: VEOA AND COMPETITIVE SERVICE 113

I. COMPETITIVE SERVICE—THE COMPETITIVE SELECTION PROCESS 113
A. REQUIREMENT TO USE COMPETITIVE PROCEDURES 115
B. QUALIFICATIONS 115
1. Education 115
2. Experience 115
3. Time in Grade 116
4. Specialized Experience 116
5. Conduct 116
6. Waiver of Qualifications 116
C. ANNOUNCEMENTS 117
1. Agencies Can Use Both Competitive and Merit Promotion Announcements 117
2. Agencies May Cancel Announcements for Reasons Not Contrary to Law 117

D. AREA OF CONSIDERATION 118
1. Agencies' Rights to Limit the Area of Consideration 118
2. Agencies' Rights to Broaden the Area of Consideration 118
E. EXAMINATIONS 119
1. Definition 119
2. Assignment of Points 119
F. THE REGISTER 119
1. Ranking 119
a. Factors 119
b. Requirement to Select Preference Eligible 120
c. Exceptions to Selecting a Preference Eligible—OPM Passover Authority 120
d. Discontinuance 121
II. COMPETITIVE SERVICE—THE MERIT PROMOTION PROCESS AND INTRA-AGENCY TRANSFERS 121
A. MERIT PROMOTION PROCESS VERSUS THE COMPETITIVE PROCESS 122
B. WHO MAY QUALIFY 122
C. ANNOUNCEMENTS 123
D. AGENCIES HAVE THE DISCRETION TO USE COMPETITIVE PROCEDURES, MERIT PROMOTION PROCEDURES, OR INTRA-AGENCY TRANSFERS TO FILL POSITIONS 123
III. EXCEPTED APPOINTMENTS 123
A. EXCEPTED APPOINTMENTS FOR VETERANS 124
1. 5 USC § 3112 124
2. 5 USC § 4214 (VRA) 124
3. 5 USC § 3316 124
4. Conflicts Among These Appointments 124
B. THE OUTSTANDING SCHOLAR PROGRAM (OSP) 125
C. THE CLERICAL AND ADMINISTRATIVE SUPPORT POSITIONS PROGRAM (CASP) 125
D. THE FEDERAL CAREER INTERN PROGRAM (FCIP) 125

CHAPTER 12: VEOA AND EXCEPTED SERVICE 127

I. DEFINITION OF EXCEPTED SERVICE 127
A. SCHEDULE A AND THE "POSITIVE FACTOR TEST" 127
B. SCHEDULE B 128
C. SCHEDULE C 128
II. EXCEPTED SERVICE POSITIONS AND VEOA RIGHTS 129
A. EXCEPTED SERVICE POSITIONS SUBJECT TO VETERANS' PREFERENCE STATUTES 129
1. Postal Service Positions 130
2. Title 38 "Hybrid" Positions 130
3. Foreign Service Act Appointments 131
4. Attorney Positions and the "Positive Factor Test" 131
5. Auditor Positions 132
6. Department of Transportation Employees 132
7. Staff of the President and Vice President 132

8. Civilian Intelligence Positions and the "Positive Factor Test".... 132
B. EXCEPTED POSITIONS EXEMPT FROM VEOA 133
1. FMCS Mediators and Conciliators 133
2. Positions Certified by the President Pursuant to 3 USC § 115 133
3. Health Care Professionals Hired Pursuant to 38 USC §§ 7401(1) & 7406 133
4. Employees of the World Bank 134

CHAPTER 13: ROLE OF THE DEPARTMENT OF LABOR—VEOA 135

I. FILING A COMPLAINT 135
A. WHO MAY FILE 135
1. Preference Eligibles 135
a. Definition 135
b. Excluded From Definition of "Preference Eligible" 136
2. Veterans 136
B. TIME LIMITS, EQUITABLE TOLLING AND WAIVER 136
1. Time Limits for Filing Complaint With DOL-VETS 136
2. Equitable Tolling 137
3. Denials of Equitable Tolling 137
4. Waiver 137
C. CONTENTS OF COMPLAINT 137
1. Requirements for a VEOA Complaint 137
2. Purpose of Filing With DOL-VETS 138
3. The Complaint Must Be Filed With DOL-VETS 138
4. The Claim Must Be in Writing 138
5. All Claims of Violation Must Be in the Complaint to DOL 139
II. DEPARTMENT OF LABOR INVESTIGATION 139
A. AUTHORITY TO INTERVIEW WITNESSES AND PROCURE DOCUMENTS 139
B. SUBPOENA POWER 139
C. FINDINGS 139
D. EFFORTS TO RESOLVE COMPLAINT 139
E. NOTIFICATION FROM COMPLAINANT 140
F. TIME LIMITS AND EQUITABLE TOLLING 140

CHAPTER 14: APPEALS TO THE MERIT SYSTEMS PROTECTION BOARD—VEOA 141

I. DEFINITION OF "APPEAL" 141
II. WHO MAY FILE AN APPEAL 141
A. COVERED INDIVIDUALS 141
1. Preference Eligibles and Certain Veterans 141
2. Certain Veterans Who Have Substantially Completed Three Years of Active Duty 141
3. Those Who First Filed With the Department of Labor 141
B. EXCLUDED INDIVIDUALS 142
1. Those Excluded by VEOA Statute & Appointing Authority 142
2. Those Employed by Certain Agencies 142

III. CONTENTS OF THE APPEAL TO THE MSPB 142
A. DEFINITION OF APPEAL AND REQUIREMENTS 142
B. BOARD CONSTRUCTION OF A VEOA APPEAL 143
IV. JURISDICTION 144
A. JURISDICTION OVER VEOA COMPLAINTS FILED BY PREFERENCE-ELIGIBLES 144
B. JURISDICTION OVER VEOA COMPLAINTS FILED BY NON-PREFERENCE ELIGIBLES 144
1. Jurisdictional Elements 144
2. Jurisdiction Over a Right-to-Compete Claim Requires a Job Announcement 144
3. Jurisdiction Does Not Require That the Individual Apply for the Vacancy for a Right-to-Compete Claim 145
4. Substantial Completion of Three Years of Active Duty Military Service is Sufficient for Jurisdiction 145
C. JURISDICTION OVER ENFORCEMENT OF VEOA ORDERS, DECISIONS AND SETTLEMENTS 145
1. Decisions and Orders 145
2. Settlements 146
D. BURDEN OF PROOF 146
E. EXHAUSTION OF ADMINISTRATIVE REMEDIES 146
1. Exhaustion of Administrative Remedies 146
a. Time Limits, Equitable Tolling and Waiver 146
2. Equitable Tolling 147
3. Waiver 148
a. DOL Resolution of Complaint 148
4. Failure to Exhaust Administrative Remedies 149
a. Complaint Must Be Filed With DOL-VETS 149
b. Premature Filing With DOL 149
c. Written Notification From DOL 149
d. Letter of Intent to DOL 149
e. Complaint to DOL Must State All Claims 150
F. ADMINISTRATIVE JUDGE'S RESPONSIBILITY TO PROVIDE NOTICE 151
1. Specific Notice 151
2. General References to Veterans' Preference Rights Are Sufficient to Trigger the Notice Requirement 151
G. DISMISSAL FOR LACK OF JURISDICTION 151
V. DISMISSALS FOR OTHER THAN LACK OF JURISDICTION 152
A. DISMISSAL WITHOUT PREJUDICE 152
B. DISMISSAL FOR FAILURE TO PROSECUTE 152
C. DISMISSAL FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED 152
D. DISMISSAL FOR MOOTNESS 153
E. DISMISSAL FOR *RES JUDICATA* 153
F. DISMISSAL FOR COLLATERAL ESTOPPEL 154
VI. RETROACTIVE APPLICATION 154
VII. VEOA AND OTHER STATUTES 155

A. 5 USC § 7701 155
B. USERRA 155
C. VETERANS READJUSTMENT ACT (VRA) 156
D. TITLE VII AND OTHER DISCRIMINATION STATUTES 156
E. WHISTLEBLOWER PROTECTION ACT (WPA) 156
F. THE FORD ACT 156
G. 5 USC § 7121 COLLECTIVE BARGAINING AGREEMENT (CBA) 157
H. 5 CFR PART 351—REDUCTION IN FORCE (RIF) PROCEDURES 158
I. 5 USC § 2302—PROHIBITED PERSONNEL PRACTICES 158
1. The Board Cannot Order a Remedy Under VEOA for an Alleged Violation of 5 USC § 2302(b)(11) or (12) Except as Part of an Otherwise Appealable Action 158
2. Violations of a Veteran's Right-to-Compete is Not a Prohibited Personnel Practice 159
J. THE BACK PAY ACT 159
VIII. HEARING 159
IX. REMEDIES 160
A. COMPLIANCE ORDER 160
1. The Agency Must Recreate the Selection Process Under the Circumstances of the Original Selection 160
2. The Agency Cannot Conduct a Hypothetical Reconstruction 161
3. Reconstruction and Mootness 161
B. LOST WAGES AND BENEFITS 161
C. LIQUIDATED DAMAGES 162
D. ATTORNEY FEES AND COSTS OF LITIGATION 162
X. JUDICIAL REVIEW 163
A. FEDERAL CIRCUIT 163
1. Where to File 163
2. Time Limits 163
3. Scope of Review 163
4. Procedure 164
B. DISTRICT COURTS 164
1. Election 164
2. Where to File—Venue and Jurisdiction 164
3. Time Limits 164
4. Procedure 165

APPENDIX A: ELIGIBILITY DATA FORM—VETS/USERRA/VP FORM 1010 167

APPENDIX B: VETS—USERRA FY 2010 ANNUAL REPORT TO CONGRESS 171

APPENDIX C: MSPB APPEAL FORM 185 195

TABLE OF CASES 205