

## U.S. Department of Labor

Office of the Assistant Secretary for  
Veterans' Employment and Training  
Washington, D.C. 20210



April 26, 2000

DIRECTOR'S MEMORANDUM NO 20-00

MEMORANDUM FOR: REGIONAL ADMINISTRATORS AND DIRECTORS FOR  
VETERANS' EMPLOYMENT AND TRAINING

FROM: *Stanley A. Seidel*  
STANLEY A. SEIDEL  
Director, Operations and Programs

SUBJECT: USERRA Case Referral Question and Answer Fact Sheets

**PURPOSE:** To advise field staff about the production of question and answer (Q & A) fact sheets containing information about USERRA case referrals. To direct field staff to provide referral fact sheets to USERRA claimants considering whether to request referral of USERRA cases for consideration of litigation.

**BACKGROUND:** In order to address any lack of understanding of referrals, and to improve customer service, VETS has produced informational materials on referrals. The materials consist of two new fact sheets in a Q & A format. One of the fact sheets covers referral of Federal cases, the other covers referral of non-Federal cases.

**ACTION:** Copies of the new fact sheets are attached to this DM. Investigators will provide a copy of the relevant referral fact sheet to USERRA claimants when writing to explain options available following the investigation. In the case of claims filed against State employers, investigators should also review the guidance contained in DM 37-99 prior to advising claimants of their options.

VETS regional offices will act as principal liaison throughout the referral process. When a referral is received from the case investigator, the regional office will advise the claimant in writing, providing the name and phone number of the person in the regional office who will serve as point of contact (POC) for the claimant. If a claimant calls to inquire about a case that has gone forward from the regional office, the regional POC will contact the entity then working on the referral for a status update. With the permission of the entity involved (i.e., regional solicitor, Department of Justice, or Office of Special Counsel), the POC may refer the claimant directly to that office for information.

**ADDITIONAL INFORMATION:** Questions on this DM should be directed to Nick Dawson at (202) 693-4711.

**QUESTIONS AND ANSWERS ON REFERRALS UNDER  
THE UNIFORMED SERVICES EMPLOYMENT AND  
REEMPLOYMENT RIGHTS ACT OF 1994  
(USERRA, TITLE 38 U.S. CODE §§ 4301-4333)**

**FEDERAL CASES**

1. What is a USERRA referral?

A USERRA referral for enforcement of rights with respect to a Federal executive agency is the referral of a case by the Department of Labor's Veterans' Employment and Training Service (VETS) to the Office of Special Counsel (OSC) for consideration of litigation before the Merit Systems Protection Board (MSPB). VETS can only refer cases after an individual has filed a complaint with VETS alleging the Federal executive employer involved has violated USERRA. If VETS' efforts do not resolve the complaint, VETS will notify the claimant and, upon request of the claimant, refer the case to OSC. If reasonably satisfied that the claimant is entitled to the remedies sought, OSC may appear on behalf of, and act as attorney for the claimant in an action before the MSPB.

2. What is the referral process?

A claimant can only request a referral after receiving notification from VETS that VETS' efforts with respect to the complaint did not resolve the complaint. The notification advises the claimant of his or her right to request a referral to OSC. Upon receipt of a written request for referral from the claimant, the case is prepared for referral to OSC by the VETS investigator who handled the case. A letter is sent to the employer advising that referral has been requested, and a copy of the letter is sent to the claimant. The referral documents are reviewed in the VETS regional office and then by the Department of Labor's regional solicitor. Following these reviews, the case is forwarded to OSC. The claimant is advised when the referral to OSC is made.

Referral for consideration of litigation does not automatically result in representation of the claimant by OSC. OSC conducts its own review of the case and makes an independent decision regarding whether or not to represent the claimant. Following its review, OSC will advise the claimant whether it will provide representation before the MSPB. If OSC notifies the claimant that it will not provide representation, the claimant may file his or her own complaint with the MSPB.

3. How long does the referral process take?

There are many factors that have a bearing on how long the referral of a given case from VETS to OSC will take. In particular, the number and complexity of the issues involved in a case will have a major impact on the speed of the referral process. Accordingly, it is not possible to give a reliable estimate that can be applied to all referrals. While many referrals to OSC are made within a few weeks of the referral request, complex cases can

take six months or more to complete. This does not include the additional time during which OSC reviews the case. The Department of Labor is committed to providing the highest possible quality of service in as expeditious a manner as each case permits.

4. How can a claimant check on the status of his or her request for referral?

Once the case has been forwarded to the VETS regional office by the case investigator, the regional office will provide the claimant the name and phone number of a VETS staff member who will act as the principal point of contact for information on status of the referral. In responding to a claimant's request for information on a referral that has gone to OSC, the VETS regional office will contact OSC for the requested information or in some cases may refer the claimant directly to OSC.

5. Does a claimant have an alternative to the referral process?

Yes. An individual may file a complaint directly with the MSPB if he or she chooses not to file a complaint with VETS, or if he or she files a complaint with VETS and, having been notified that VETS' efforts did not resolve the complaint, chooses not to request referral of a case to OSC. The individual may wish to consult or retain an attorney for such a private action.

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**NON-FEDERAL CASES**

1. What is a USERRA referral?

A USERRA referral for enforcement of rights with respect to a private employer or State/local government is the referral of a case by the Department of Labor's Veterans' Employment and Training Service (VETS) to the U.S. Attorney General (Department of Justice, or DOJ) for consideration of litigation in U.S. district court. VETS can only refer cases after an individual has filed a complaint with VETS alleging the employer involved has violated USERRA. If VETS' efforts do not resolve the complaint, VETS will notify the claimant and, upon request of the claimant, refer the case to DOJ. If reasonably satisfied that the claimant is entitled to the remedies sought, DOJ may appear on behalf of, and act as attorney for the claimant in an action in U.S. district court.

2. What is the referral process?

A claimant can only request a referral after receiving notification from VETS that VETS' efforts with respect to the complaint did not resolve the complaint. The notification advises the claimant of his or her right to request a referral to DOJ. Upon receipt of a written request for referral from the claimant, the case is prepared for referral to DOJ by the VETS investigator who handled the case. A letter is sent to the employer advising that referral has been requested, and a copy of the letter is sent to the claimant. The referral documents are reviewed in the VETS regional office and then by the Department of Labor's regional solicitor. Following these reviews, the case is forwarded to DOJ. The claimant is advised when the referral to DOJ is made.

Referral for consideration of litigation does not automatically result in representation of the claimant by DOJ. DOJ conducts its own review of the case and makes an independent decision regarding whether or not to represent the claimant. Following its review, DOJ will advise the claimant either directly or through VETS whether it will provide representation. If DOJ notifies the claimant that it will not provide representation, the claimant may file his or her own complaint in a private action.

3. How long does the referral process take?

There are many factors that have a bearing on how long the referral of a given case from VETS to DOJ will take. In particular, the number and complexity of the issues involved in a case will have a major impact on the speed of the referral process. Accordingly, it is not possible to give a reliable estimate that can be applied to all referrals. While many referrals to DOJ are made within a few weeks of the referral request, complex cases can

take six months or more to complete. This does not include the additional time during which DOJ reviews the case. The Department of Labor is committed to providing the highest possible quality of service in as expeditious a manner as each case permits.

4. How can a claimant check on the status of his or her request for referral?

Once the case has been forwarded to the VETS regional office by the case investigator, the regional office will provide the claimant the name and phone number of a VETS staff member who will act as the principal point of contact for information on status of the referral. In responding to a claimant's request for information on a referral that has gone to DOJ, the VETS regional office will contact DOJ for the requested information or in some cases may refer the claimant directly to DOJ.

5. Does a claimant have an alternative to the referral process?

Yes. An individual may file a complaint directly in court if he or she chooses not to file a complaint with VETS, or if he or she files a complaint with VETS and, having been notified that VETS' efforts did not resolve the complaint, chooses not to request referral of a case to DOJ. Private USERRA actions against State employers are filed in State court. Actions against local governments and private employers are filed in U.S. district court. The individual may wish to consult or retain an attorney for such a private action. In particular, persons contemplating a private action against a State agency should first consult with a legal adviser. Some States may be immune from being sued by an individual.