



Opinion Letter USERRA-2026-1

September 8, 2026

SUBJECT: Protections for Employees from “Other Retaliatory Action” under USERRA

The U.S. Department of Labor (DOL), through the Veterans' Employment and Training Service (VETS), interprets and provides guidance on the Uniformed Services Employment and Reemployment Rights Act (USERRA) and investigates complaints filed under this law. USERRA protects civilian employment and reemployment rights and benefits for returning service members and protects employees from discrimination based on uniformed service, including service in both the Active and Reserve components of the armed forces, as well as service in the Commissioned Corps of Public Health Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, the National Urban Search and Rescue Response System, and intermittent personnel with the Federal Emergency Management Agency. VETS' USERRA opinion letters help publicize VETS' position on complex areas of the law. This letter sets forth VETS' interpretation and analysis of specific statutory and regulatory provisions relating to protections for employees from “other retaliatory action” under USERRA.

I. Background

On January 2, 2025, the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act (P.L. 118-210 § 221(b)) (“the Dole Act”) added “other retaliatory action” to the list of prohibited actions by employers of service members who are protected under USERRA. *See* 38 U.S.C. § 4311(b). Before enactment of the Dole Act, employers were prohibited under USERRA from discriminating against or taking an “adverse employment action” against their employees because they engaged in USERRA-protected activity.¹ 38 U.S.C. § 4311(b); *See* P.L. 104-275 (S 1711) (October 9, 1996). Now, due to this change in the law, an employer may not discriminate in employment against or take any adverse employment action *or other retaliatory action* against any person because such person has engaged in USERRA-protected activity (emphasis added). 38 U.S.C. § 4311(b).²

VETS addresses questions involving allegations of discrimination and retaliation pursuant to its responsibilities to provide service members assistance in obtaining USERRA benefits and to investigate USERRA complaints. 38 U.S.C. §§ 4321-4322. VETS has received inquiries from service members and volunteers who support them

¹ Under USERRA, there are four types of USERRA-protected activity: (1) action to enforce a protection afforded any person under USERRA; (2) testimony or making a statement in or in connection with any proceeding under USERRA; (3) assistance or other participation in an investigation under USERRA; and (4) exercise of a right provided for in USERRA. These activities are protected under USERRA regardless of whether the person who engaged in the activity ever performed service in the uniformed services. 38 U.S.C. § 4311(b).

² The statute provides:

An employer may not discriminate in employment against or take any adverse employment action or other retaliatory action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services. 38 U.S.C. § 4311(b).

regarding the types of actions that may be considered “other retaliatory action” under USERRA. This Opinion Letter examines the meaning of “other retaliatory action” and provides some examples of such action.

II. What types of actions by employers may be included under USERRA’s “other retaliatory action” prohibition?

For cases under Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e – 2000e-17, the Supreme Court’s landmark decision in *Burlington Northern* established that retaliation claims are not limited to employment decisions that affect terms and conditions of employment, but extend to actions that could dissuade a reasonable worker from making or supporting a discrimination charge (*Burlington Northern and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)). However, because USERRA’s anti-retaliation provision required an “adverse employment action,” some courts interpreted USERRA to cover a narrower range of actions than those covered under Title VII. See *Lisdahl v. Mayo Foundation*, 633 F.3d 712, 721 (8th Cir. 2011). With the Dole Act’s inclusion of “and other retaliatory action” to 38 U.S.C. § 4311(b), the principles established for Title VII retaliation claims are now equally applicable to retaliation claims under USERRA.

In the context of Title VII, federal courts have found that the retaliation provision is “not limited to discriminatory actions that affect the terms and conditions of employment” and may extend to “harms that are not workplace-related or employment-related.” *Baloch v. Kempthorne*, 550 F.3d 1191, 1198 n.4 (D.C. Cir. 2008) (quoting *Burlington Northern* at 64). This affords employees “protection from a wider range of retaliatory conduct” than would be available under previous standards. *Crawford v. Carroll*, 529 F.3d 961, 974 (11th Cir. 2008).

Examples of “other retaliatory actions” have included changes to work schedules, transfers to less desirable positions, increased scrutiny of an employee, the filing of false criminal charges against an employee, exclusion from professional opportunities, and threats or coercion. See, 132 Am. Jur. Trials 1 (2013-2016) (citing cases). The Supreme Court emphasized that context matters in assessing whether an action is materially adverse, and actions that might be immaterial in some contexts may be actionable in others. See *Thompson v. North American Stainless, LP*, 562 U.S. 170, 174-75 (2011); Corp. Compl. Series: EEO § 4:4 (2019-2020) (citing cases).

III. Conclusion

Before the 2025 enactment of the Dole Act, employers were prohibited under USERRA from discriminating against or taking an “adverse employment action” against their employees because they engaged in USERRA-protected activity. With the enactment of the Dole Act, “other retaliatory actions” are now actionable in USERRA retaliation claims. The action need not be an “employment action.” This encompasses any retaliatory actions that would be sufficient to dissuade a reasonable employee from, under USERRA, enforcing a protection, testifying in a proceeding, assisting in an investigation, or exercising a right.