

Chapter 5
GUIDELINES FOR THE DEVELOPMENT AND
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Chapter 5
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5.01 Introduction

The Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E) program uses a variety of rehabilitation plans in an effort to provide individualized services. Veterans who would like to return to work in the job held prior to entering active duty may benefit from a reemployment rehabilitation plan. This chapter will outline the services available in a reemployment plan; discuss how to develop and administer reemployment plans; and provide regulatory and procedural guidance on this type of plan. In addition, it will also discuss protections provided under the law to ensure the Veteran's employment rights are enforced to ensure a successful return to work.

5.02 References and Resources

- Laws: 38 United States Code (U.S.C.) 3101
 38 U.S.C. 3104
 38 U.S.C. 3107
 38 U.S.C. 3111
 38 U.S.C. 3117
 38 U.S.C. 4301-4335, The Uniformed Services Employment
 and Re-Employment Rights Act of 1994
- Regulations: 38 Code of Federal Regulations (CFR) 21.35
 38 CFR 21.47
 38 CFR 21.73
 38 CFR 21.120
 38 CFR 21.250
 38 CFR 21.252
 38 CFR 21.254
 38 CFR 21.268
 38 CFR 21.283
 38 CFR 21.362
 38 CFR 21.364
- VA Forms (VAF): VAF 28-0957, Vocational Rehabilitation Guidelines and
 Debt Prevention
 VAF 28-8872, Rehabilitation Plan
 VAF 28-8872a, Rehabilitation Plan-Continuation Sheet
- Websites: <http://askjan.org>

5.03 Reemployment Overview

a. Definitions

38 U.S.C. 3101 and 38 CFR 21.35 provide definitions to the most commonly used terms in VR&E. The most commonly used terms in a reemployment plan are:

1. Rehabilitated to the Point of Employability

Rehabilitated to the Point of Employability (RTE) means that the individual is employable in an occupation for which a vocational rehabilitation program has been provided by VA's VR&E program.

2. Employable

38 CFR 21.250 defines employable as being able to secure and maintain suitable employment in the competitive labor market or in a sheltered workshop/rehabilitation facility, or other special situation at the minimum wage.

3. Vocational Goal

A vocational goal means gainful employment that is consistent with the individual's abilities, aptitudes and interests.

4. Program of Employment Services

A program of employment services includes counseling, medical, social, and other placement and post-placement services provided to an individual under the Chapter 31 program to assist the with obtaining and/or maintaining suitable employment.

5. Suitably Employed

38 CFR 21.283 defines suitably employed as employment in the competitive labor market, sheltered situations, or on a no-pay basis which is consistent with the individual's abilities, aptitudes, and interests.

b. Purpose

The purpose of a reemployment rehabilitation plan is to provide the services necessary for the individual to return to work in the job held prior to entering active duty. It is not uncommon for the individual to require some short term training or the opportunity to refresh his/her skills prior to the delivery of

employment focused services. Therefore, the rehabilitation plan is developed as a either an Individualized Written Rehabilitation Plan (IWRP) or a combined IWRP/Individualized Employment Assistance Plan (IEAP).

The only time it is permissible to develop the plan as an IEAP is when the individual was a prior participant of a vocational rehabilitation program and requires solely a program of employment services, as outlined in 38 U.S.C. 3117.

c. Duration

Per 38 CFR 21.70, vocational rehabilitation programs cannot exceed 48 months, or the part-time equivalent, except as indicated in 38 CFR 21.78. Extensions are based on the Veteran's employment handicap classification and require VR&E Officer concurrence. 38 CFR 21.78 provides the following guidance on extensions beyond 48 months based on the classification of:

1. Employment Handicap

A rehabilitation program for a Veteran with an employment handicap may be extended beyond 48 months when:

- (a) The Veteran previously completed training for a suitable occupation, but the Veteran's service-connected disability has worsened to the point that he/she is unable to perform the duties of the occupation for which training had been provided, and a period of training in the same or different field is required. An extension beyond 48 months under Chapter 31 alone shall be authorized for this purpose.
- (b) The occupation in which the Veteran previously completed training is found to be unsuitable because of the Veteran's abilities and employment handicap. An extension beyond 48 months under Chapter 31 alone shall be authorized for this purpose.
- (c) The Veteran previously used education benefit entitlement under other programs administered by VA, and the additional period of assistance to be provided under Chapter 31 which the Veteran needs to become employable will result in more than 48 months being used under all VA education programs. Under these conditions, the number of months necessary to complete the program may be authorized under Chapter 31 provided that the length of the extension will not result in authorization of more than 48 months under Chapter 31 alone.

(d) A Veteran in an approved Chapter 31 program has elected payment at the Chapter 30 educational assistance rate. The 48 month limitation may be exceeded only:

- To the extent that the entitlement in excess of 48 months does not exceed the entitlement previously used by the Veteran in a course at the secondary school level before December 31, 1989, or
- If the Veteran is in a course on a term, quarter, or semester basis which began before the 36 month limitation on Chapter 30 entitlement was reached, and completion of the course will be possible by permitting the Veteran to complete the training under Chapter 31.

(e) The assistance to be provided in excess of 48 months consists solely of employment assistance.

2. Serious Employment Handicap

The duration of a rehabilitation program for a Veteran with a serious employment handicap may be extended beyond 48 months under Chapter 31 for the number of months necessary to complete a rehabilitation program under the following conditions:

- (a) To enable the Veteran to complete a period of rehabilitation to the point of employability.
- (b) To provide an extended evaluation in cases in which the total period needed for an extended evaluation and for rehabilitation to the point of employability would exceed 48 months.
- (c) To provide a program of independent living services, including cases in which achievement of a vocational goal becomes feasible during or following a program of independent living services.
- (d) The assistance provided in excess of 48 months consists solely of employment assistance.
- (e) Following rehabilitation to the point of employability:
 - (1) The Veteran has been unable to secure employment in the occupation for which training was provided despite intensive efforts on the part of the VA and the Veteran, and a period of retraining or additional training is needed.

- (2) The skills which the Veteran developed in training for an occupation in which he/she was employed are no longer adequate to maintain employment in that field and a period of retraining is needed.
- (3) The Veteran's service-connected disability has worsened to the point that he/she is unable to perform the duties of the occupation for which the Veteran has been trained, and a period of training in the same or different field is required.
- (4) The occupation in which the Veteran previously completed training is found to be unsuitable due to the Veteran's abilities and employment handicap.

d. Services

The services offered by the VR&E program are governed by 38 U.S.C. 3104. In reemployment planning, services are individualized and designed to assist the individual in returning to work in the job held prior to entering active duty. A variety of services are available to assist in meeting this goal, to include:

1. Short-term Training or Certificate Completion

The plan can include short-term training to enhance employment skills and/or obtain professional certification if the VRC determines that these skills/certifications are necessary for the individual to obtain and maintain suitable employment per 38 CFR 21.120. If training is included as part of the plan, the plan can be developed as an IWRP or a combined IWRP/IEAP.

2. Subsistence Allowance

Subsistence allowance is permissible when training is part of a combined IWRP/IEAP.

3. Revolving Fund Loan

Advances from the revolving fund are permissible in a combined IWRP/IEAP. Per 38 CFR 21.254, revolving fund loans are prohibited during a program that consists solely of employment services, i.e. an IEAP.

4. Work-Study Allowance

Participation in the work study program is appropriate in a combined IWRP/IEAP. However, if the individual is participating in a program of employment services only per 38 U.S.C. 3117, then he/she will not meet the eligibility criteria for participation in the work-study program.

5. Career Counseling

The VRC or Employment Coordinator (EC) assigned to provide case management services continually provides career counseling to ensure the individual has the skills necessary to make an informed decision regarding his/her vocational goal.

6. Reemployment Rights Advice

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects civilian job rights and benefits for Veterans and members of the active and Reserve components of the U.S. armed forces. USERRA provides that returning Servicemembers must be promptly re-employed in the same position that they would have attained had they not been absent for military service, with the same seniority, status and pay, as well as other rights and benefits determined by seniority.

USERRA establishes the cumulative length of time that an individual may be absent from work for military duty and retain reemployment rights to five years (the previous law provided four years of active duty, plus an additional year if it was for the convenience of the Government). There are important exceptions to the five-year limit, including initial enlistments lasting more than five years, periodic National Guard and Reserve training duty, and involuntary active duty extensions and recalls, especially during a time of national emergency. USERRA clearly establishes that reemployment protection does not depend on the timing, frequency, duration, or nature of an individual's service as long as the basic eligibility criteria are met.

USERRA provides protection for Veterans with disabilities, requiring employers to make reasonable efforts to accommodate the disability. Servicemembers convalescing from injuries received during service or training may have up to two years from the date of completion of service to return to their jobs or apply for reemployment.

The period an individual has to make application for re-employment or report back to work after military service is based on time spent on military duty. For service of less than 31 days, the Servicemember must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel

home plus an eight-hour rest period. For service of more than 30 days but less than 181 days, the Servicemember must submit an application for reemployment within 14 days of release from service. For service of more than 180 days, an application for reemployment must be submitted within 90 days of release from service.

USERRA also requires that Servicemembers provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity. An employee should provide notice as far in advance as is reasonable under the circumstances. Additionally, Servicemembers are able (but are not required) to use accrued vacation or annual leave while performing military duty.

If a Veteran or Servicemember believes his/her re-employment rights are being violated, the case manager must coordinate services by referring him/her to the Department of Labor (DOL) Veterans' Employment and Training Service (VETS). VETS provide assistance to all persons having claims under USERRA, including Federal and Postal Service employees.

7. Job Placement Services

Job placement services are focused on returning the Veteran to the position he/she held prior to active duty. Therefore, the case manager must work complete an occupational analysis to ensure that the vocational goal is suitable and the Veteran has the functional ability to return to the position prior to providing job placement services. See M28R.VI.A.4 and 38 CFR 21.252 for additional information on job development and placement services.

8. Job Accommodations

The case manager will work closely with the individual to identify and address any needed job accommodations, and provide training on how to request accommodations in the work setting. The Job Accommodation Network (JAN) is an excellent resource for identifying accommodations that may be beneficial based on the disabling condition.

For more information on JAN, go to <http://askjan.org>.

9. Medical and Mental Health Services

The case manager will coordinate medical and mental health services as needed with the Veterans Health Administration (VHA) to ensure the

individual's health conditions are treated and stabilized to the maximum extent possible.

10. Employment Adjustment Allowance

The following actions must occur before the Veteran is entitled to receive an employment adjustment allowance (EAA):

- The Veteran must be within the 12-year eligibility period, or extension of that period
- The Veteran's case must have progressed through Rehabilitation to the Point of Employability status
- There must be a documented declaration of job-readiness by the case manager in the Counseling/Evaluation/Rehabilitation (CER) folder at the time the Veteran's case is placed in Job Ready status
- An IEAP must be developed either as part of the IWRP or prior to assignment to Job Ready status
- The Veteran must satisfactorily participate in the services planned in the IEAP for a period of 30 days before a payment of EAA may be authorized

See 38 CFR 21.268 and M28R.V.B.10 for more information on how to process and pay EAA.

11. Post-Employment Consultation and Assistance

The case manager will monitor the Veteran's progress for a minimum of 60 days post-employment to ensure that all barriers, issues, and questions have been addressed and the employment is stable.

- e. Limited and Specifically Defined Employment Assistance for Certain Previous Participants who are Employable per 38 U.S.C. 3117

Veterans, who previously participated in a vocational rehabilitation program under Chapter 31, or a similar program under a State vocational rehabilitation program, may receive employment assistance to obtain employment consistent with their abilities, aptitudes, and interests. Such Veterans must have a service-connected disability rated at 10 percent or more and be determined to be employable in an occupation consistent with their abilities, aptitudes, and interests. VA can provide the assistance described in this section regardless of current entitlement to a program of vocational

rehabilitation. Additionally, these services are not subject to the 18-month employment services entitlement limitation or the 12-year eligibility period. This is the only time direct placement into an IEAP from Evaluation and Planning (EP) status is permissible.

1. Services

The following limited employment assistance can be provided per 38 U.S.C. 3117:

- Direct placement in employment
- Referral to a Disabled Veterans Outreach Program (DVOP) specialist or a Local Veterans Employment Representative (LVER)
- Use of job development and placement specialists at a State or Federal rehabilitation agency, State Employment Service and the Veterans' Employment and Training Service of the Department of Labor, Office of personnel Management, or any other public or nonprofit organization with placement services
- Any for-profit entity, if otherwise cost-effective and comparably effective services from the entities above are unavailable

2. Required Determination

To provide this limited assistance, the VRC must conduct an initial evaluation and determine that the Veteran is employable in an occupation consistent with his/her abilities, aptitudes, and interests. Determinations of employment handicap, serious employment handicap, and current reasonable feasibility are not applicable, unless the evaluation indicates that the Veteran is not employable in a suitable occupation, in which case entitlement to other Chapter 31 services and assistance must be determined.

5.04 Reemployment Plan Development

The following information outlines the development of a reemployment plan.

a. Conduct an Analysis of the Veteran's Needs

Using information gathered during the initial evaluation, and in collaboration with other service providers, conduct an analysis of the following factors to determine the services needed to assist rapid placement in employment:

- Functional capacity/limitations
 - Job accommodations
 - Independent living needs, if appropriate
 - Education/training needs
- b. Develop the Reemployment Plan

All rehabilitation plans have common elements, but the VRC must individualize the elements to fit the Veteran's identified needs. The elements of an IWRP or combined IWRP/IEAP are:

1. Program Goal

The rehabilitation plan must include a specific occupational goal or occupational cluster and 3 digit *Dictionary of Occupational Titles* (DOT) code.

2. Intermediate Objectives

Intermediate objectives identify secondary goals that contribute directly to the achievement of the program goal. The VRC must ensure that each objective:

- Is clear and easily understood
- Relates to achieving the goal
- Is observable and can be evaluated
- Has a measurable outcome

3. Anticipated Completion Date

An anticipated completion date helps track progress toward the goal and keeps the plan moving forward. It also informs both the VRC and the Veteran of the time frame in which services will be provided.

4. Services

There are a number of services that can be provided during an IWRP or combined IWRP/IEAP. See section 5.03d of this chapter for examples of those services.

When documenting services, ensure that the description is:

- Specific and detailed, and
- Clear and unmistakable as to its relationship to a specific intermediate objective

5. Duration of Services

Duration of services indicates a start and end date for each intermediate objective.

6. Service Providers

Services can be provided by a variety of sources, to include VR&E, VHA, medical personnel, and education/training facilities

The rehabilitation plan must list the contact information of who will be providing services, including the following:

- Name
- Address
- Telephone number
- Email address, if available

7. Evaluation Information

This section provides information on how the Veteran's progress will be measured during the rehabilitation process, and provides an evaluation schedule.

This section also outlines the terms that will be used to measure satisfactory conduct, as required by 38 U.S.C. 3111. The VRC and individual must collaborate on the development of these terms since the successful development and implementation of a rehabilitation plan requires the full and effective participation of the individual in the rehabilitation process. See 38 CFR 21.362 and 21.364 for additional information and guidance on measuring conduct.

8. Progress Notes

Progress notes provide a place to document any additional information related to the plan.

It is important to note that when a court with proper jurisdiction has appointed a legal guardian or custodian for the Veteran, VR&E must develop the plan in consultation with the guardian or custodian

c. Determine Case Management Level

There are three levels of case management based on the individual's needs. For those Veterans participating in an IWRP or combined IWRP/IEAP, the case management level must be either:

1. Level 2

If the Veteran is participating in a combined IWRP/IEAP, then Level 2 case management is appropriate during the delivery of academic services. Level 2 indicates that the Veteran needs guidance and structure, but is able to follow through and stay on track. The Veteran may be recovering from recent setbacks and/or demonstrate the following characteristics:

- Circumstances that may interfere with the Veteran's progress in completing the rehabilitation plan, such as personal, family, emotional, financial, or medical concerns
- Requires remedial instruction to prepare for post-secondary education placement tests

Level 2 requires face-to-face case management meetings at least once per academic term, or at least three times per year for non-standard academic terms. For non-academic programs, face-to-face meetings are required once per month for the first three months, then quarterly.

2. Level 3

If the Veteran is participating in an IEAP, then Level 3 case management is required. Level 3 generally requires monthly face-to-face case management, but it is permissible to utilize monthly contacts in place of face-to-face visits if no special needs or barriers are identified. Contacts may be made by DVOP/LVER when appropriate.

d. Corporate WINRS Activity

CWINRS activity requires updates to the claims processing and disposition tabs prior to the development of the IWRP. This is accomplished by:

- Ensuring that the Serious Employment Handicap indicator is set to “Yes” or “No” as applicable by using the Update Disposition function on the Claim Processing tab.
- Entering the date that Evaluation and Planning status is closed.
- Selecting Entitlement Code from the drop-down list.
- Selecting the correct Rehabilitation Claim Disposition from the drop-down list.
- Allowing CWINRS default selection of Award Payment System.
- Entering Pre-Rehab Salary using 4 digits, with the maximum entry of 9999.

When the VRC and the Veteran have agreed upon the services to be provided during the IWRP or combined IWRP/IEAP, the VRC must complete the rehabilitation plan data fields under the REHAB tab of CWINRS by completing the following steps:

1. On the Rehab Tab, select Add Plan to enable the Plan functionality.
2. Select program plan IWRP on the CWINRS Rehab Tab for an IWRP or a combined IWRP/IEAP (Note: when developing a combined IWRP/IEAP, the Add Plan function on the Employment Tab, steps 1 through 10 below, must also be completed to ensure the occupational code of the Chapter 31 program is included in Performance Analysis and Integrity (PA&I) Intranet reports).
3. Select Reemployment from the track selection drop-down option.
4. Set Program Cost Limit from the drop-down option.
5. Enter the annual review date.
6. Enter the Plan Modified date.
7. Choose “no” under self-employment (SE) goal
8. Set level of case management, indicated in CWINRS as Supervision Level.

9. Enter the DOT code.
 10. Enter the program goal.
 11. At this point, the VRC must click OK to save the plan, then to add individual objectives using functionality on the Rehabilitation Plan screen.
 12. Click OK to save.
 13. Click Print Plan to print VAF 28-8882, Rehabilitation Plan, and VAF 28-8872, Rehabilitation Plan Continuation Sheet (see Appendix O, VA Forms, for information on how to access VA Forms).
 14. Prepare High Cost Memo as needed based on approval levels for program costs (see M28R.IV.C.1 for information on cost approval levels).
 15. Use "Print Letters" to generate VAF 28-0957, Vocational Rehabilitation Guidelines and Debt Prevention.
 16. Update CWINRS case status to Rehabilitation to Employment. This action will automatically update BDN with the DOT code.
- e. Complete the Orientation Process

The VRC must provide an orientation to ensure the Veteran understands both the VRC's role and his/her role, as well as answer any questions the Veteran may have regarding the rehabilitation process. The rehabilitation plan and VAF 28-0957 are used to guide this orientation. The orientation emphasizes the following:

- Expectations for conduct and cooperation
- Requirement to report changes in dependency, contact information, performance and rate of participation immediately
- Process for obtaining supplies, medical treatment and other services outlined in the plan

Following orientation, both the VRC and the Veteran must sign the rehabilitation plan and VAF 28-0957. Place the original on the right side of the CER folder and provide the Veteran with a copy.

- f. Document the Planning and Orientation Process

It is imperative that the VRC document the planning and orientation process, as well as the decisions made during plan development. The following information must be included on either VAF 28-1902n or in a CWINRS case note and filed on the right side of the CER folder:

- Vocational Exploration Activities
 - Suitability of Selected Vocational Goal
 - Type of Plan
 - Planned Services
 - Retroactive Induction
 - Program Charges and Costs
 - Level of Case Management
 - Other Considerations
- g. Administer the Plan

After these actions are complete, implement the services identified in the plan. Document all case activity in CWINRS notes or on VAF 119, Report of Contact, and file in the center section of the CER folder. See Appendix O, VA Forms for information on accessing VA Forms.

See M28R, Part V, Section A for detailed information on plan implementation.

h. Redevelop the Plan

If the individual is not progressing through the plan as expected, or it becomes clear that the goals of the plan need to be reassessed, the VRC must redevelop the rehabilitation plan. The plan remains in its current status during the redevelopment period; not placed in Interrupted or Evaluation and Planning Status. The only time it is appropriate to move the plan to Interrupted status is if the case is being redeveloped to an Individualized Independent Living Plan (IILP). This ensures that the statutory limits placed on IILPs are not exceeded.

5.05 Outcomes of Reemployment Plans

a. Rehabilitated

The intent of Chapter 31 is to enable individuals, to the maximum extent possible, to become employable and to obtain and maintain suitable employment. Per 38 CFR 21.283, the VRC may move the case to rehabilitated status when the Veteran has:

- Successfully completed the reemployment program goals, and
- Maintained suitable employment for at least 60 days

See M28R.V.A.7 for detailed information on how to complete the rehabilitation process.

b. Discontinued

If the individual decides not to pursue services, or does not respond to attempts by the VRC to participate in the rehabilitation plan, then it may be necessary to discontinue the case. See M28R.V.A.7 for information on the discontinuation process.