



USERRA — Military Service After Enrollment

Information for:
All Funds

The Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA) — 38 U.S.C. 4301 et seq. — provides benefit protection to employees who leave public employment to serve in the uniformed services.

Provisions of the New Jersey Administrative Code — N.J.A.C. 17:1-3.10 — were adopted to comply with USERRA and apply the federal requirements to all the defined benefit and defined contribution retirement systems administered by the New Jersey Division of Pensions & Benefits (NJDPB).

IMPORTANT NOTE ON USERRA TIMEFRAMES

Members and employers should be aware of the timeframes particularly associated with purchasing USERRA service. The employer should notify the NJDPB no later than 30 days after the employee's return from the uniformed service.

Members may request USERRA-eligible service credit until the expiration of five years or three-times the period of the uniformed service, whichever is shorter. Any request beyond this time limit is not eligible for purchase. Members then have an additional five years or three-times the period of the uniformed service, whichever is shorter, to make the contributions necessary to complete the purchase payments.

MILITARY SERVICE USED FOR BENEFIT QUALIFICATION

USERRA provides benefit protection to an employee who leaves public employment to serve in the uniformed services and then returns to public employment within time frames specified in the law — normally within 90 days of the end of the uniformed service.

Upon return to public employment, the employee may receive pension credit for the period of uniformed service by making the pension contributions that would have been required had the employee not left employment to serve in the uniformed services. Payment to the retirement system of any contributions for the purchase of USERRA-eligible service is optional and voluntary on the part of the employee.

Upon purchase, USERRA-eligible service can be used toward vesting, eligibility for retirement, the calculation of retirement benefits, and — if applicable — eligibility for post-retirement health benefits.

Examples:

- For vesting: an employee with eight years of pension credit and two years of purchased USERRA-eligible service would be considered vested.
- For retirement: an employee with 23 years of pension credit and two years of purchased USERRA-eligible service would be considered to have 25 years of service for determining eligibility for retirement (for the Public Employees'

Retirement System (PERS) or Teachers' Pension and Annuity Fund (TPAF), an Early Retirement; for the Police and Firemen's Retirement System (PFRS) or State Police Retirement System (SPRS), a Special Retirement) and toward the calculation of the retirement benefit. The employee would also be eligible for post-retirement health benefits coverage based on 25 years of service (if the employer normally provides this benefit).

The employee need not return to employment with the same public employer the employee left to enter the military service. The employee can return to employment with a different public employer, as long as the employment is covered under the same retirement system that the member was enrolled in prior to the USERRA-eligible service.

Example: A PERS member from Township "A" terminates employment to serve in the uniformed services for two years. Upon completion of military service, the employee returns to PERS-covered employment at Township "B" within the time frame specified by law. The employee would be eligible for USERRA service credit.

ADDITIONAL ELECTIVE CONTRIBUTIONS TO SUPPLEMENTAL RETIREMENT PLANS

USERRA also permits employees to make additional elective deferrals for any programs, e.g., the New Jersey State Employees Deferred Compensation Program (NJSEDCP), Supplemental Annuity

Collective Trust (SACT), or Additional Contributions Tax-Sheltered (ACTS) programs, in which they were enrolled immediately prior to their military service. These deferrals may not exceed the maximum amount employees would have been permitted to contribute during the period of military service had the employees been continuously employed by the public employer during those periods.

ALTERNATE BENEFIT PROGRAM EMPLOYERS

If an employee participates in the Alternate Benefit Program (ABP) and is reemployed under the provisions of USERRA by an employer who participates in the ABP, the employer must allocate the amount of any employer contribution for that employee in the same manner and extent that the allocation occurred for other employees during the same period of service. However, the employee is entitled to these employer contributions only if he or she makes the employee contributions to the plan for the period of uniformed service.

The vehicle for reporting the employee contributions and securing reimbursement from the State of New Jersey for the employer's contribution is the *Alternate Benefit Program Employer Contribution Report*. Under the "Mandatory Back Deduction" section of the report, the employer should report the employee's name, ABP number, and the salary amount from which the employee contributions are made for the period of uniformed service. A notation indicating that this salary is relative to military service after employment should also be provided. "The USERRA Process" section lists procedures that employers should follow for ABP members.

Note: The employer is not required or expected to make up any earnings that contributions would have made had the employee been employed continuously.

EMPLOYER RESPONSIBILITIES

It is the employer's responsibility to notify employees of the benefit protection provided by USERRA. The employer should also notify the NJDPB of an employee's return from the uniformed services within 30 days.

THE USERRA PROCESS

The following actions should occur when an employee returns to covered employment within the time frames specified under USERRA:

1. The employer should notify the NJDPB no later than 30 days after the employee's return from the uniformed services by submitting a *Request for USERRA-Eligible Service* form. The form can be found on the NJDPB website at: www.nj.gov/treasury/pensions

Notification is also required for employees on a leave of absence for military service without pay for which no deductions were made and no service credited to their pension accounts.

Note: If the employee received pay from the employer, had pension deductions taken and, therefore, received pension credit for the period of military service, no action is required of the employer with respect to USERRA for pension purposes.

2. Regulations provide that a member must request USERRA-eligible service credit within five years or three-times the period of the uniformed service, whichever is shorter. Any request beyond this time limit is not eligible for purchase as USERRA-eligible service credit. For example, if an employee returns to employment after three months of USERRA-eligible service, that service must be requested within nine months of authorizing deductions.

When notified by either the employer or the employee, the NJDPB will annotate the employee's pension account to reflect the USERRA-eligible service. We will also notify the employee at the home address and send a quotation for the cost of the purchase.

The purchase cost is based on the pensionable salary the employee would have received had he or she not left employment for military service. If the salary cannot be reasonably determined, the purchase cost will be based on the employee's average pensionable compensation during the 10- or 12-month period immediately preceding the military service.

Along with the quotation will be an *Authorization Form* the employee must sign and return to the NJDPB if he or she wishes to make the contributions and have the pension service credit count for retirement benefits.

3. If the employee authorizes deductions to obtain retirement credit for the USERRA-eligible service, the employer should take and remit those deductions in accordance with the instructions on the *Certification of Payroll Deductions*, which the NJDPB will send to the employer. Members have an additional five years or three-times the period of the uniformed service, whichever is shorter, to complete the purchase of USERRA-eligible service credit.

USERRA requires that contributions or lump-sum payments to the retirement systems for USERRA-eligible service must be deferred from federal tax. Therefore, they must be taken through payroll deductions.

Employee requests to make additional elective contributions to supplemental retirement plans for the USERRA-eligible service periods should

be made directly to the employer, who should contact the supplemental plan administrator for instructions on how to process and report these voluntary contributions.

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