



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 requesting USERRA 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 will not be eligible. 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 receive service credit. **Note:** Employers should notify the NJDPB in writing within 30 days of a member's return from uniformed services and shall provide the dates of such service, regardless of whether the member wishes to request USERRA-eligible service credit. See "THE USERRA PROCESS" section for further information.

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 paying 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 addition of USERRA-eligible service is optional and voluntary on the part of the employee.

Upon payment, 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 USERRA-eligible service would be considered vested.
- For retirement: an employee with 23 years of pension credit and two years of 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.

THE USERRA PROCESS

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

1. It is the employer's responsibility to notify employees of the benefit protection provided by USERRA upon return from uniformed service, and notify the NJDPB in writing within 30 days of the member's return from uniformed services, which includes the dates of such service.

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. If the employee wishes to receive pension credit for the time period while on leave to serve in the uniformed services, a *Request for USERRA-Eligible Service* form should be completed by the employee and certified by the employer. The completed form should then be returned to the NJDPB for processing. The form can be found on the NJDPB website at: www.nj.gov/treasury/pensions

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 USERRA-eligible service credit.

Examples:

• *An employee returns to employment after three months of USERRA-eligible service. That service must be requested within nine months of returning to employment (three months x three times the time period = 9 months).*

• *An employee returns to employment after two years of USERRA-eligible service. That service must be requested within five years of returning to employment (two years x three times the time period = six years. Five years is the shorter time period).*

Note: Employees who do not request USERRA-eligible service credit within the required timeframe may apply to purchase this service as a unpaid Leave of Absence at a later date; however, it should be noted that the cost of a purchase is based on your nearest age at the time of your request, the current or highest fiscal year salary posted to your account, whichever is higher, at the time of the request, and the amount of service being purchased. In most cases, this will be a higher cost to the member. The maximum credit eligible to purchase for an unpaid leave of absence is three months per leave. Please see the *Purchasing Service Credit* Fact Sheet available on our website for further information.

Upon receipt of the completed form, the NJDPB will send a cost quotation to the employee at the home address. The 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 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 pension 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 payment for USERRA-eligible service credit. Upon authorization, the NJDPB will annotate the employee's pension account to reflect the USERRA-eligible service.

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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