

Department of Employee Trust Funds
WISCONSIN RETIREMENT SYSTEM ADMINISTRATION MANUAL

CHAPTER 22 — UNIFORMED SERVICES SUBJECT TO RETIREMENT CREDIT

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2200 Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides retirement credit to uniformed service employees. USERRA was signed into law in 1994 and applies to retirement rights for uniformed service employees retroactive to 1940. The U. S. Federal Department of Labor considers USERRA a restatement and clarification of the veterans' reemployment rights laws enacted in 1940 that provided reemployment without loss of seniority.

NOTE: Refer to subchapter 2001 for other Military Service credit.

2201 Uniformed Services

- Armed Forces
- Army and Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty
- Commissioned corps of the Public Health Service
- Any other category of persons designated by the President in time of war or emergency.

2202 Examples of Military Service

- Army
- Army Reserve
- Marine Corps
- Marine Corps Reserve
- Air Force
- Air Force Reserve
- Coast Guard
- Commissioned Officer of US Public Health Service

2203 Periods of Uniformed Service when Employees Become Eligible for Retirement Credit

- Active duty
- Active duty for training
- Inactive duty for training which includes weekend drills if part of normal work schedule
- Annual training
- Training for which orders were given
- Volunteer or required active duty military service or training
- Time a person is absent for the purposes of a fitness exam

2204 Retirement Credit

The amount of retirement credit cannot exceed what the employee **would have received** had they remained continuously employed throughout the period of service. Contributions to the Wisconsin Retirement System (WRS) are based on what the employee would have earned from their employer had they not been absent from work to fulfill obligations in the uniformed services. The computation is not based on what the employee earned from the uniformed service.

ETF will assist you in reporting the earnings and hours for USERRA retirement credit. The employer can collect the employee share of the required employee contributions from the employee but, according to Federal law, the employee cannot be required to pay interest charges for late reported employee contributions. This means the employer is responsible for both the employee and the employer share of any interest assessed on late reported WRS contributions. Call the Employer

Communication Center toll free at (888) 681-3952 or locally at (608) 264-7900 for assistance.

2205 What the Employee Must Do to Receive Credit

For employees to receive USERRA credit for their military service, they must meet the following conditions:

1. Notify the employer that they are going on military leave.
2. Leave the military under honorable conditions.
3. Return to the same employer within the following time limits, for leaves which are:
 - Less than 31 days, report to work the next regularly scheduled workday after receiving adequate travel and rest.
 - 31 to 180 days, return to work within 14 days after completion of service.
 - More than 180 days, return to work within 90 days after completion of service.
4. Provide the employer with a copy of their military leave and earnings statement (military papers) showing the date of entry and the date of discharge.

NOTE: *Employer Bulletin* Volume 14, No. 19 dated December 26, 1997 contained a notice titled "Uniformed Services Subject to Retirement Credit." Employers were encouraged to post the notice for employee informational purposes. This notice should help employers avoid additional interest on late reported earnings by informing employees of their rights immediately, thus eliminating the number of retroactive requests from your employees. A copy of the notice appears on the following page.

UNIFORMED SERVICES SUBJECT TO RETIREMENT CREDIT

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides retirement credit to uniformed service employees. These employees became eligible for retirement credit for periods of active duty, active duty for training, inactive duty for training which included weekend drills, annual training, training for which orders were given, and volunteer or required active duty military service or training. Even though USERRA was signed into law in 1994, it applies to retirement rights for uniformed service employees back to 1940. The US Federal Department of Labor considers USERRA a restatement and clarification of the veterans' reemployment rights laws enacted in 1940, which provided reemployment without loss of seniority.

You may be eligible for retirement credit for uniformed services performed since 1940. Uniformed services means the Armed Forces, the Army and Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency. Examples of Military Service include: Army, Army Reserve, Marine Corps, Marine Corps Reserve, Air Force, Air Force Reserve, and the Coast Guard.

The amount of retirement credit cannot exceed what you would have received had you remained continuously employed by your employer throughout the period of service. Employee contributions to the Wisconsin Retirement System (WRS) are based on what you would have earned from your employer had you not been absent from work for service in the uniformed services. The computation is not based on what you earned from the uniformed service.

To receive the credit, you must do the following:

1. Notify your employer that you are going on military leave.
2. Leave the military under honorable conditions.
3. Return to the same employer within the following time limits, for leaves which are:
 - Less than 31 days, report to work the next regularly scheduled workday after receiving adequate travel and rest.
 - 31 to 180 days, return to work within 14 days after completion of service.
 - More than 180 days, return to work within 90 days after completion of service.

If you have uniformed services for which you have not been given retirement credit, provide your employer with a copy of your military leave and earnings statement showing the date of entry and the date of discharge. Your employer will work with the Department of Employee Trust Funds to report the earnings and hours for retirement credit. Your employer can collect the employee share of the required employee contributions from you but you cannot be required to pay any interest charges for late reported contributions.

2206 Current Year Reporting

In order to satisfy the requirements of USERRA for WRS purposes, an employer must submit a copy of the employee's military leave and earnings statement (military papers) to ETF and do **one** of the following:

1. Keep the employee on a paid leave of absence and continue to remit monthly WRS contributions. Report the employee's entire annual earnings and hours for the current year using the annual transaction code P000.
2. Pay the employee the difference between their usual earnings and what they are receiving as payment for military service. (Wisconsin Act 162 requires this of State agencies.) Remit monthly WRS contributions on the full earnings of which a portion is deemed earnings for the portion of the payment the employee received from the military. The amount reported to WRS at year end equals the earnings and hours the employee would have received if the employee had remained employed. Report the employee's entire annual earnings and hours for the current year using the annual transaction code P000.
3. Place the employee on an unpaid leave of absence for the entire period of military duty. Remit monthly WRS contributions only on the earnings the employee actually received prior to going on military leave. Submit an *Employee Transaction Report* (ET-2533) with Action Code P050 to report the actual earnings received and hours worked. Leave the Action Date column blank and enter the beginning date of the leave in the Last Day Paid column on the *Employee Transaction Report*.

An *Employee Transaction Report* must be completed and submitted to ETF if an employee does not return to work and hours and earnings have been reported. Service reported from the date the employee entered military service to the last reported service and the corresponding earnings must be removed from the employee's WRS account and the contributions refunded to the employer. Refer to Chapter 11 for instructions on completing the *Employee Transaction Report* for a prior year refund. Use action code 27 to complete this correction transaction. Terminate the employee using the original date that they left for military service as the action date.

2207 Retroactive Reporting

An employee can receive full retirement credit for uniformed military services performed anytime since 1940 when that military service was performed while on leave from WRS covered employment. The employee must provide the employer with a copy of the employee's military leave and earnings statement (military papers), showing the date of entry and the date of discharge.

When providing USERRA retirement credit retroactively, the employer must submit the military papers to ETF with an *Employee Transaction Report* (ET-2533). Report only the additional earnings and hours for each year being adjusted. Use Action Code P029 to indicate Late Reported Earnings.

ETF invoices the employer for the contributions and any interest due. The amount due includes the employer and employee share of contributions plus the corresponding interest. Employers must remit to ETF the total amount due including the employer and employee interest. Employers may collect the employee-required contribution from the employee, or the employer may elect to pay part or all of the employee amounts.

Employees cannot be required to pay interest on the late employee-required contributions under USERRA (the employer must pay the employer's and employee's share of interest). Employees are given up to three times the duration of their military leave to repay their contribution to the employer. All employee payments to the employer must be made within five years without interest or penalties assessed to the employee.

Complete an *Employee Transaction Report* to terminate an employee who does not return to work. Use the appropriate action code and the date they left for military service as the action date when terminating the employee.