

## CHAPTER 22 – UNIFORMED SERVICES SUBJECT TO RETIREMENT CREDIT

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### 2200 Uniformed Services Employment and Reemployment Rights Act of 1994

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is a federal law providing certain pension rights to employees returning from uniformed service. USERRA generally provides service credit and Wisconsin Retirement System contributions related to a military leave of absence when an employee leaves a WRS-covered position with an employer for active military duty and returns to that same employer within a specific time frame.

The United States Department of Labor considers USERRA to be a restatement and clarification of veterans' reemployment rights laws dating back to 1940. USERRA's reemployment provisions were effective December 12, 1994. Prior to that date, previous federal or state veterans' reemployment rights laws may apply.

**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

- Navy
- Navy Reserve
- Coast Guard
- Commissioned Officer of U.S. 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**

USERRA provides for WRS service credit and contributions in the amount the employee would have received had the employee been continuously employed with their WRS participating employer.

### **WRS Contributions**

Upon reemployment, the employee is responsible for paying any missed WRS Employee-Required Contributions (EERC) unless the employee had been covered by a collective bargaining agreement providing that the employer would make those contributions. The employee has the choice to make all, some, or none of the make-up EERC related to the military leave. Employers must submit WRS Employer-Required Contributions (ERRC) to match the EERC the employee chooses to make. The employer is also required to fund any additional obligations, including interest that would have accrued on the ERRC and EERC, once those contributions are remitted.

USERRA allows for make-up EERC to the WRS to be made beginning with the date of reemployment and ending on the earlier of three times the period of military service or five years. USERRA specifies that make-up contributions are only allowed while the returning employee is employed with the pre-military service employer.

The required WRS contributions are based on the earnings the employee would have made had the employee 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.

### **WRS Service Credit**

The returning employee will receive WRS service credit for time spent on active military duty as though the employee had been continuously employed with their WRS-participating employer, whether or not any make-up contributions are made. With limited exceptions, the maximum amount of USERRA credit an employee may receive is five years (for federal exceptions to the five-year limit, please visit the U.S. Department of Labor website at [www.dol.gov/vets/](http://www.dol.gov/vets/), or contact ETF toll free at 1-877-533-5020)

To apply for USERRA credit, the employee and employer must submit a *USERRA Certification form* (ET-4560) to ETF.

*Note:* In the event your returning employee refuses to sign form ET-4560, the employer should complete Sections B and C, validating that the employee was on active military leave. Also, indicate on the form that the returning employee refuses to sign the form. The employee will then receive service credit through USERRA.

## **2205 Employee Responsibility to Receive Military Service 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, unless such notice was precluded by military necessity or otherwise impossible or unreasonable.
2. Leave the military under honorable conditions.
3. Return to the same employer within the following time limits, unless that timely return or re-application for employment was impossible or unreasonable, for leaves which are one of the following:
  - Fewer than 31 days; 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.
  - 31 to 180 days; service member must submit an application for reemployment within 14 days of release from service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
  - More than 180 days; an application for reemployment must be submitted within 90 days of release from service.
  - Service-connected injury or illness: Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing.
4. Provide the employer with a copy of military papers showing the date of entry and the date of discharge.

For more information about USERRA reporting requirements, please refer to the United States Department of Labor website at [www.dol.gov](http://www.dol.gov).

To receive WRS credit, the employer and employee must submit *USERRA Certification (ET-4560)* form to ETF.

## **2206 Employer Reporting**

Prior to the implementation of 2011 Wisconsin Act 32, ETF provided employers with two reporting options for employees electing their USERRA rights for their military leave:

1. Place the employee on an unpaid leave of absence, or;
2. Continue to report the employee's deemed hours and earnings as if the employee were an active employee.

Act 32 altered how ETF processes employee and employer required contributions related to a military leave of absence. Absent a collective bargaining agreement with provisions to the contrary, the Acts provide that the employee is responsible for making WRS employee required contributions. As a result, if an employee is not covered by a collective bargaining agreement under which the employer pays the total amount of the employee required contributions, employers may no longer continue to report an employee on military leave as an active WRS employee and remit contributions on that employee's behalf.

ETF offers the following guidelines for employers with employees currently on a military leave of absence, or with employees who left on a military leave of absence subsequent to the effective date of the WRS Employee-Required Contribution (EERC) payroll deductions in August of 2011:

1. If the employer is required to continue to pay the WRS EERC, the employer may continue to report that employee as active and remit both the WRS Employer-Required Contribution (ERRC) and EERC. Examples would include certain public safety employees and employees who remain under a collective bargaining agreement that specifies that the employer will pay the EERC on behalf of the employee, or;
2. If the employee is required to pay their own EERC, the employer must place that employee on a military leave of absence, reporting with an Transaction Type 50 on the employer's year-end annual report. No WRS ERRC or EERC are remitted when the employee is on military leave.

Once an employee returns to work with their pre-military leave of absence employer, the employer is required to submit the *USERRA Certification form* (ET-4560) along with a copy of military-issued papers reflecting the employee's entry and discharge dates, such as the employee's DD-214. If the employee was not covered under a collective bargaining agreement providing that the employer would pay the WRS EERC, the employee will have the choice whether to make up all, some, or none of the missed EERC. The employer must then match whatever contributions the employee chooses to make up. ETF provides a *USERRA Make-up Contributions Monthly Tracking Report* (ET-2573) for an employer to report required ERRC and EERC.

For more information, please see the instructions available on ETF's website entitled Employer Reporting for an Employee on a Military Leave of Absence, or contact the Employer Communication Center toll free at 1-877-533-5020 or locally at 608-266-3285.

## **2207 Death Benefits for Certain Inactive WRS Participants (HEART Act)**

On June 17, 2008, the federal "Heroes Earnings Assistance and Relief Tax Act" (HEART Act) became effective. This federal legislation is retroactive to January 1, 2007, and affects the death benefits payable to the survivors of participants who die as "inactive" Wisconsin Retirement System (WRS) participants while on active military duty.

"Inactive" WRS death benefits consist of the employee required contribution balance plus any voluntary additional contributions. "Active" WRS death benefits generally include the employee required contribution balance plus a matching amount of employer contributions, and any voluntary additional contributions.

**Under the HEART Act, when a WRS participant terminates employment to enter the military and then dies in active military service, the death benefit must be calculated as though he/she returned to employment on the date of death and treated as an "Active" WRS death.**

This means that the WRS death benefit would also include the matching employer contributions, which, in most situations, will double the death benefit.

**Since the HEART Act is retroactive to January 1, 2007, it applies to deaths that occurred on or after that date.**

**Note:** If the participant was on a leave of absence during the period of military service (rather than terminated), and died while on a leave of absence, **the HEART Act has no effect because the death benefits will already be calculated as a death in "Active" WRS**

**employment.**

For questions regarding the HEART Act, contact the Employer Communication Center toll free at 1-877-533-5020 or locally at 608-266-3285.