

H.E.A.R.T. Act of 2008 -- Differential wage payments

Another provision of the H.E.A.R.T. Act requires that the WDC treat a participant as severed from employment for purposes of qualifying for a distribution under §457(d)(1)(A)(ii) while on active duty for a period of more than thirty days or during any period the person is performing service in the uniformed services. In addition, the WDC must provide that if the individual elects to receive a distribution, the individual may not make an elective deferral or employee contribution for six months after the distribution. Staff recommends adding language to the *Plan and Trust Document* to provide compliance with this provision.

Table of Contents

Staff recommends the addition of a table of contents to this document. Because *the Plan and Trust Document* is now thirty-three pages long, the inclusion of a table of contents would improve its usability.

PROPOSED PLAN AND TRUST DOCUMENT CHANGES

A. Table of Contents

Add a table of contents to the *Plan and Trust Document*. This will be a useful tool for anyone seeking to find specific sections in the document.

B. Article I: Definitions

1. A revision to definition 1.01 h. "Domestic Relations Order"
The current Plan and Trust Document refers to § 40.80 (2r) (b), Wis. Stats. This should be revised to reflect the correct new reference in § 40.08, Wis. Stats. as well as retain the reference to § 40.80, Wis. Stats.

"DOMESTIC RELATIONS ORDER means a judgment, decree, or order issued by a court pursuant to a domestic relations law of any state or territory of the United States relating to a marriage that terminated after December 1, 2001 and that conforms to the requirements of Wisconsin Statutes Sections 40.08 and 40.80(2r) and the BOARD."

2. The addition of definition 1.01 gr. "Differential Wage Payments." This is a new term added to §3401(h) of the Internal Revenue Code by the federal H.E.A.R.T. Act.

"DIFFERENTIAL WAGE PAYMENTS means any one or more payment, including but not limited to a payment under s. 230.315, Stats., which meets all the following criteria:

(a) The payment is made by an employer to a participating employee with respect to any period during which the participating employee is performing service in the uniformed services, as defined in 38 USC 4303, while on active duty for a period of more than 30 days.

(b) The payment represents all or a portion of the earnings the participating employee would have received from the employer if the participating employee were performing services for the employer."

3. A revision to definition 1.01 I. "Employee." This change is required by the federal H.E.A.R.T. Act as codified in 26 U.S.C. 414(u)(12)(A)(i) concerning the required treatment of differential wage payments and is shown as underlined and italicized text in the definition below.

¹ "Uniformed services" as defined by 38 USC chapter 43 includes more than just the armed forces.

“EMPLOYEE means any person, other than independent contractors, who receives any type of compensation from the EMPLOYER, for which services are rendered (including, but not limited to, elected or appointed officials, salaried employees and limited term employees). A person receiving DIFFERENTIAL WAGE PAYMENTS remains an employee although not rendering services to the EMPLOYER.”

3. The addition of definition 1.01 tr. “Qualified Military Service.” This is also a term used by the federal H.E.A.R.T. Act.

“QUALIFIED MILITARY SERVICE is a term having the same meaning as provided in 26 US Code s. 414(u)(5).”

C. Article X: Benefits

1. The addition of Article 10.02 bm. to read as follows:

*“bm. **Death of a PARTICIPANT performing QUALIFIED MILITARY SERVICE.** The beneficiary(ies) of a PARTICIPANT who died while performing QUALIFIED MILITARY SERVICE shall be entitled to any additional benefits that would be provided under the PLAN had the PARTICIPANT resumed and then terminated employment on account of death. This provision applies only to the extent that there is any difference, now or in the future, between the benefits provided under the PLAN in the event of the death of a PARTICIPANT (a) who was employed at the time of death and (b) who was severed from employment before the death.”*

2. The addition of a title to Article 10.06. to read “Special Rules Regarding Distributions to Retired Safety Officers for Insurance Premium Payments.”
3. The addition of Article 10.07. “Special Rules Regarding PARTICIPANTS in the Uniformed Services:” The first two of these provisions are required by the federal H.E.A.R.T. Act of 2008, as codified in 26 U.S.C. 414(u)(12)(B)(i) and (ii). The third provision is required by 26 U.S.C. 414(u)(2) and WIS. STAT. § 40.015 (2).

“a. Option to be treated as severed from employment. A person receiving DIFFERENTIAL WAGE PAYMENTS shall nevertheless be treated as having terminated employment during any period the person is performing service in the uniformed services, as defined in 38 USC 4303, or on active duty for a period of more than 30 days, if the person elects to take a distribution from the PLAN based upon severance from employment.

b. Restriction on future deferrals. Any person who elects to receive a distribution under sub. (1) may not make an elective deferral or employee contribution into the PLAN during the 6-month period following the distribution.

c. Additional elective deferrals. When a PARTICIPANT becomes entitled to the benefits of chapter 43 of title 38, United States Code, then makeup employee contributions to the PLAN are permitted in the manner, and amounts, and within the time limits described in 26 U.S.C.

414(u)(2). If the PARTICIPANT's EMPLOYER would have been required to make a matching contribution with respect to a deferral actually made during the period of QUALIFIED MILITARY SERVICE, then the EMPLOYER must similarly match any contribution made by the employee under this paragraph."

If the Board approves these recommended changes, the Board Chair could sign an updated Plan and Trust Document after the Board meeting on November 18, 2008.

Department staff will be available at the meeting to discuss this memo and answer any questions you may have regarding the proposed revisions.

Attachment: Draft Revised Plan and Trust Document