

## **Employer Reporting For an Employee on a Military Leave of Absence**

Prior to the implementation of 2011 Wisconsin Acts 10 and 32, the Department of Employee Trust Funds (ETF) provided employers with two reporting options for employees going on a military leave of absence who then elected their USERRA rights:

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.

Acts 10 and 32 have altered how ETF processes employee and employer required contributions related to a military leave of absence. One important change is that absent a collective bargaining agreement with provisions to the contrary, the Acts provide that the employee is responsible for making Wisconsin Retirement System (WRS) employee required contributions.

ETF is now offering the following guidelines for employers with employees currently on a military leave of absence, or with employees who have left on a military leave of absence since the effective date of the WRS employee required contribution payroll deductions in August of 2011:

1. If the *employer* is required to continue to pay the WRS employee-required contributions, the employer may continue to report that employee as active and remit WRS employer and employee required contributions. Examples would be certain public safety employees and employees who remain under a collective bargaining agreement that specifies that the employer will pay the WRS employee-required contributions, or;
2. If the *employee* is required to make his or her own WRS employee required contributions, the employer should be placing that employee on a military leave of absence, which is an Action Code 50 on an employer's annual report. No WRS employer or employee contributions are remitted when the employee is on military leave.

If an employer is still treating employees on military leave as active employees, but the employer was prohibited by the Acts from paying the employee required contributions, ETF asks that the employer take two actions:

1. Report all of the employees on active military duty for whom the employer is prohibited from paying the WRS employee required contributions as an Action Code 50 on the employer's annual report, and report only hours and earnings actually worked in 2011 or deemed earnings prior to the payroll date in August 2011 when mandatory employee paid contributions began, and;
2. Submit supplemental remittance reports subtracting all of the WRS employee required contributions from the correct year that should have been paid by the employee, dating back to the payroll date in August 2011 when mandatory employee paid contributions began.

## **USERRA Certification Form-When an Employee Returns**

When an employee who was on a military leave of absence returns to employment with his or her pre-military service employer, ETF is requesting that employers provide employees with ETF's new USERRA Certification Form (ET-4560). <http://etf.wi.gov/publications/et4560.pdf> That form is necessary for two reasons, no matter the length of the employee's military leave:

1. An employee on a military leave of absence receives WRS service credit for that period of time, with limited exceptions, and;
2. An employee has the choice whether to make up none, some, or all of the WRS employee required contributions dating to the employee's military leave of absence, within a time period of three times the length of the employee's service, up to a maximum of five years. These contributions must be paid back while employed at his or her pre-military service employer as pre-tax contributions.

The USERRA Certification Form was made necessary by changes to state law, not by any changes to the federal USERRA law, which has consistently provided for an employee to receive service credit while that employee was on a military leave of absence, and consistently required that an employee have the choice to make up none, some, or all of the employee required contributions dating to that absence.

### **Employee Section**

The employee section of the USERRA Certification Form requires the employee to indicate the percentage of WRS employee required contributions the employee intends to make up. The instructions to the form reflect that the employee should then provide the form to his or her employer with a copy of supporting military documentation. Supporting documentation is only required when the employee's leave was longer than 30 days.

### **Employer Section**

The employer certifies that the employee meets the requirements under USERRA, and includes the employee's deemed hours and earnings related to the employee's military leave of absence. The employer then submits the form and supporting military documentation to ETF.

### **Next Steps**

Once ETF receives the USERRA Certification Form, if the employee intends to make up the employee required contributions prior to the employer submitting the employer's current or subsequent monthly remittance report, the employer should include those contributions on the corresponding monthly remittance report as normal earnings and contributions by employment category. ETF would be sending an estimate of the total employee and employer required make-up contributions, and once those contributions have been paid, no further action is necessary.

If the employee intends to make up the employee required contributions over a period of time longer than the deadline for his or her employer to submit the employer's current or subsequent monthly remittance report, ETF would send the employee and employer an estimate of the employee required make up contributions, and corresponding employer contributions. The

employee would have the choice with respect to how much of those contributions he or she would like to pay during the time limits provided under USERRA for making up contributions, and the employer would remit the total amount of the employee and employer required make-up contributions to ETF via Box 4 on the Monthly Remittance Report via the ONE System. At the same time, the employer would send the USERRA Make-Up Contributions Monthly Tracking Report to ETF (ET-2573) <http://etf.wi.gov/publications/et2573.pdf> That form is necessary to inform ETF for whom the contributions in Box 4 were made, and to record the breakdown between the employee required make-up contribution amount and the employer required make-up contribution amount.

### **Differential Pay**

If a state employee on a military leave of absence earns less in the military than that employee would be earning at his or her state position, state law requires that the employee receive differential pay. Differential pay is made up of the difference between the employee's military earnings and state earnings.

Example: If an employee earns \$40,000 annually in the employee's state position, but that same employee only earns \$30,000 annually from the military, the amount of differential pay the employee would receive from his or her state employer while on a military leave of absence would be \$10,000 annually.

Federal law provides for retirement contributions to come out of differential pay. Therefore, in the example above, an employer who was prohibited from paying the WRS employee required contributions on behalf of an employee on a military leave of absence would be submitting WRS employee required contributions to ETF based on annual earnings of *only* the differential pay amount, or \$10,000. The employee required contributions would be deducted proportionately from the employee's differential pay earnings of \$10,000. For a general category employee in 2012 with an employee required contribution rate of 5.9%, the employer would be deducting a total of \$590 annually in employee required contributions from the employee's differential pay.

If a local government employer were to provide differential pay for its employees, the procedure would be the same.

Full instructions and guidelines are included here: <http://etf.wi.gov/publications/et4560.pdf> and <http://etf.wi.gov/publications/et2573.pdf>

Employer Training on USERRA protocols including webinars, Media-site Presentations, and related material can be found here: <http://etf.wi.gov/employers/employers-training.htm>

Please contact ETF's employer Communication Center with questions or concerns at (888) 681-3952, or via e-mail through ETF's website, <http://etf.wi.gov/contact.htm>