

**BOARD OF PENSIONS
ADMINISTRATIVE RULE**

Section:	1 (Eligibility)	Subject:	Military Leave (USERRA)
Rule Number:	122	Resource:	Benefits
Reference:	Article XIII, Section 13.13(b), Rule 101	Original Date:	8/02
		Revision Dates:	4/06, 7/08, 7/10

The Uniformed Service Employment and Reemployment Rights Act (USERRA) and the Heroes Earnings Assistance and Relief Tax (HEART) Act are federal laws that provide benefit protection for employees who leave active employment for military service. This administrative rule explains the Benefits Plan medical, death and disability coverage and the retirement benefits under the Pension Plan and Retirement Savings Plan available to individuals (lay or ordained) who may leave active employment in Eligible Service to serve in the armed forces (including the Reserves and the Army and Air National Guards). The military service can be voluntary or involuntary.

I. Entitlement to USERRA Rights

A Member who is called to or volunteers for active duty in the armed forces is required to give his or her church or employing organization advance notice (written or verbal) of the impending service. The church or employing organization must advise the employee terminating employment for military service of his or her rights, benefits and obligations under USERRA and the HEART Act (referred to hereafter collectively as “USERRA rights”).

Most USERRA benefit rights are subject to the Member’s returning to employment in eligible service within five years of the initial activation (“USERRA leave period”). The five-year period includes only the time the employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

A Frequently Asked Questions document is available from the Board of Pensions’ Web site for more information for employing organizations and members.

II. Coverage Available During Military Leave¹

A. Healthcare, Death and Disability Coverage

¹ When a Member is remitting dues on a leave of absence for medical, pension and/or death and disability coverage, the same effective salary must be used for all coverages.

USERRA mandates that an employee on military leave have the right to continue employer-provided health care coverage for up to 24 months from termination of employment for military leave. If the employee performs uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health care coverage. If the employee performs uniformed service for 31 or more days, he or she cannot be required to pay more than 102% of the full premium.

The Benefits Plan permits the following continued coverage options under the Medical Plan, as well as the Death and Disability Plan, for the Member, spouse and dependent children:

1. *Members enrolled in the Traditional Program immediately prior to their leave may elect:*

- Medical coverage from TRICARE only. (TRICARE is the medical benefit program offered by the military and does not provide death and disability coverage.)
- Medical coverage from TRICARE and the Benefits Plan death and disability coverage on an approved leave of absence basis with dues paid on the last effective salary. The death and disability dues can be paid for a period of up to five years of continuous military service. (Sec. 4.4)
- Medical Plan coverage only on an approved leave of absence basis with dues paid on the minimum medical participation basis for a period of up to five years of continuous military service. (Sec. 4.4)
- Medical Plan coverage only through the Medical Continuation program with payment of the required subscription dues for a period of up to five years of continuous military service. (Sec. 13.15)
- Medical, death and disability coverage on an approved leave of absence basis with dues paid on the last effective salary for a period of up to five years of continuous military service.

2. *Affiliated Benefits Program Members:*

- Coverage from TRICARE only.
- Medical coverage only through the Medical Continuation program with payment of the required subscription dues for a period of up to five years of continuous military service. (Sec. 13.15)

B. Free Coverage

1. *Traditional Program Members:*

- Members of the Benefits Plan who leave employment for a period of uniformed service receive 30 days of free medical coverage.
- Members in the Benefits Plan will also receive 30, 60 or 90 days of free death and disability coverage depending on Years of Plan Participation.
- The cost of this coverage is paid for by the Board of Pensions. There is no charge to the employing organization or the Member for this coverage.

2. *Affiliated Benefits Program Members:*

- There is no free coverage for Affiliated Benefit Program Members.

C. Retirement Benefits Coverage

1. *Traditional Program Members:*

- The employing organization may continue enrollment in the Pension Plan. Dues are paid on the last effective salary for a period of up to five years of continuous military service.
- A Member on an approved leave of absence may elect to continue enrollment in the Pension Plan on a self-pay basis. The dues are paid on the last effective salary for a period of five years of continuous military service.
- The employing organization and Member may defer Pension Plan enrollment until the Member is reemployed. See Part III below regarding USERRA reemployment rights of Member.
- The employing organization and Member may contribute to the Retirement Savings Plan on an approved leave of absence basis. If the Member does not continue to receive compensation during military service, he or she must make after-tax contributions to the Plan.

2. *Affiliated Benefits Program Members:*

- The employing organization and Member may contribute to the Retirement Savings Plan on an approved leave of absence basis. If the Member does not continue to receive compensation during military service, he or she must make after-tax contributions to the Plan.

D. Other Rights While in Active Service

The HEART Act gives Members on military leave certain additional benefits:

1. Effective January 1, 2007, if a Member dies while on active duty during the USERRA leave period, the Pension Plan must pay his or her survivors the benefit payable to the survivor of a vested Member as set forth in Section 9.1(b) of the Plan. Such Members will receive service credit for vesting purposes for their periods of military service.
2. If a Member dies or becomes disabled during the USERRA leave period, the last employing organization that the Member served prior to active duty may elect to pay dues for Pension Plan coverage from the commencement of the Member's military leave to the date of death or disability. Note that this paragraph only applies to the Pension Plan and not to the death and disability benefits under the Traditional Program or the Affiliated Benefits Program.
3. Effective January 1, 2009, a Member in the Retirement Savings Plan will be treated, for Plan distribution purposes, as having had a severance from employment during any period that the Member performs active duty services for more than 30 days. If a Member elects to receive such a distribution, the Member may not make salary deferral contributions to the Plan during the six-month period following the distribution.
4. If the deployment is to exceed 180 days, or for an indefinite time, the Member may take a penalty-free distribution from his or her Retirement Savings Plan account. A Member who takes such a distribution can make contributions to an IRA in an amount up to the amount of the distribution (regardless of the otherwise applicable limits on IRA contributions) during the two-year period beginning on the day after the Member's end of active duty service.
5. If a Member on military leave has contributed to an employer-provided flexible spending account (FSA), the Member may request a refund of the remaining account balance at the end of a calendar year, rather than lose the money, because the mobilization may have interfered with his or her ability to spend the money as expected (if the terms of the FSA have been amended to permit such a refund).
6. If an employing organization pays a Member a military pay differential payment, the Member may elect to make salary deferral contributions to the Retirement Savings Plan from such payments.

III. Reinstatement of Benefits Following Reemployment

A. Healthcare Coverage

1. Medical Plan Reenrollment

Effective October 28, 2004, under the Transitional Assistance Management Program (TAMP), TRICARE coverage was permanently extended for 180 days at no cost to those returning from a call to active duty of more than 30 days in support of a contingency operation.

The following options are available to Plan Members returning to employment effective January 1, 2006:

- immediately resume medical coverage through the Benefits Plan, or
- continue to use TRICARE coverage for 180 days.

If a Member chooses to return to the Medical Plan provided through the Benefits Plan, the employing organization will resume paying dues. If the Member prefers to remain on TRICARE coverage, the employing organization will be relieved of medical dues for 180 days. The option that the Member selects will apply to all family members.

The Board will require written documentation evidencing the Member's eligibility for and enrollment in benefits under TAMP and the coverage dates upon reenrollment in the Benefits Plan for the Member to be eligible for a waiver of Medical Plan coverage and to avoid any pre-existing coverage or other gap in coverage problems.

2. Pre-existing Conditions when Reemployed

For Members with TRICARE coverage, USERRA requires that they be allowed to return to their civilian employer medical plans with no waiting period or penalty for pre-existing conditions (other than service-connected conditions, which are covered by the military). The returning Members are covered as if they had never left employment. This requirement is contingent upon the Member returning to employment within the time specified by law.

3. Rule of 70

The reemployed Member's time in military service will be credited as Years of Plan Participation for purposes of eligibility under the Rule of 70 if the Member returns during the USERRA leave period.

B. Retirement Benefits

1. *Pension Plan*

a. *Service*

If a Member with Pension Plan coverage notifies his employer and leaves service for military service, and returns to employment for which he or she has Pension Plan coverage during the USERRA leave period, the period of military service counts towards vesting and Years of Plan Participation (Rule of 70). The returning Member is treated as if there was never a break in service.

b. *Pension Accrual*

The Member who returns during the USERRA leave period is eligible to receive pension credits for the period of service while engaged in active duty. The credits must be based on the greater of the last effective salary of the Member or the annual median salary for the Member's employment class, pro-rated for part-time employment where applicable. The Benefits Plan must also adjust credits for any scheduled annual salary increase or increase in the annual median salary that may have occurred during the period of military service.

The last employing organization that the Member served prior to active duty must remit to the Board the full Pension Plan dues payable for the period of activation when the Member returns to his or her civilian employment.

2. *Retirement Savings Plan*

A Member returning from military leave within the USERRA leave period may participate for the period of military service through "make-up" salary deferral contributions to the Retirement Savings Plan. Upon reemployment, that employing organization must make up any scheduled employer contributions that were not made during the period of uniformed service.

C. *Other Benefits*

A Member who returns within the USERRA leave period is entitled to reinstatement of all benefits that were in place prior to the period of military leave and that the employing organization is offering or providing to other employees in his or her employment classification.