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Employer Announcement #33

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Uniformed Services Employment and Reemployment Rights Act (USERRA)

Updated January 31, 2007: The method to submit MPPT (Member Paid Pre-Tax) and MPAT (Member Paid After-Tax) contributions has changed (Questions 4 and 5). Changes are in italics.

Information about USERRA and how PERS employers should determine reemployment rights for returning United States uniformed service personnel is provided in a question and answer format below. Determining the member's right to reemployment is the employer's responsibility.

Please use the [USERRA Certification form](#) to report any previously unreported USERRA qualifying time since 1994 to PERS by **October 31, 2005**. This will allow PERS staff to update member records by the end of 2005. This form is posted on the PERS Employer website in the "Forms" section.

Q1. What is the Uniformed Services Employment and Reemployment Rights Act (USERRA) and how is it applied?

- A. USERRA is a federal law granting employees certain rights to reemployment and benefits after completing a period of duty in the United States uniformed services. USERRA compliance is a federal requirement.

The grant of reemployment and benefits upon completion of a period of duty in the United States uniformed services is not automatic. The member must qualify for these reemployment rights and benefits. **Determining the member's right to reemployment is the employer's responsibility.** Information and guidance to make this determination can be found in Title 38, United States Code, Ch. 43, Sub-Chapter II, Sections 4316 and 4318. Text of the Federal statute is available online.

If the employer determines the member's period of duty in the United States uniformed services was USERRA-qualified service, the employer must submit the [USERRA Certification form](#). This form can be found on the PERS employer website.

Once a member qualifies for reemployment, he/she is entitled to the applicable retirement benefits provided under Oregon Administrative Rules (OAR) 459-011-0100 and 459-011-0110 (PERS), and 459-075-0100 and 459-080-0100 (OPSRP). The OARs can be accessed through the PERS employer website.

Q2. What salary is subject to USERRA reporting?

- A. The salary is the **estimated wages** that the member **would have earned** if the member had not been on military duty. That salary includes what the employee was making when he/she left for military service, plus any cost of living increases, raises, etc., he/she would have received, and any increases that would have been paid due to longevity or seniority of position. This salary would also include the average overtime the employee would have worked and earned.

If the amount of salary cannot be reasonably determined, the salary shall be the employee's average rate of pay calculated for a period not exceeding the 12 months immediately preceding the period of USERRA-qualified military service.

Information on USERRA-subject salary can be found at the U.S. Department of Labor's website at www.dol.gov/vets/#ussera.

Q3. How is USERRA subject salary reported?

- A. For PERS purposes, the reporting timeframe for USERRA-subject salary is divided into two parts: 1994 through December 31, 2003, and January 1, 2004 and beyond.

For PERS Chapter 238 Program members (Tier One or Tier Two), make-up employee contributions for service in the uniformed services **through December 31, 2003** are credited to the member's account in the PERS Chapter 238 Program. Make-up employee contributions for service in the uniformed services **on January 1, 2004 and after** are credited to the member's Individual Account Program (IAP) account.

Q4. How are member paid employee contributions (MPAT or MPPT) or employer paid employee contributions (EPPT) submitted for USERRA-qualified service from 1994 through December 31, 2003?

- A. **MPAT (Member Paid After Tax)**: *The member is responsible for submitting the "make up" contributions.* The member may make-up any or all the *employee* contributions that would have been made **had he/she never left for qualifying military service**. The contributions may be **paid by the member in a time frame that, beginning with the date of reemployment, is three times the length of the military service up to a maximum of five years**. Example: If the employee was gone for one year for qualifying military service, the employee will have three years from the date of reemployment to submit the contributions.

PERS will notify the member that their employer has submitted the [USERRA Certification form](#), calculate contributions due for the USERRA-qualifying service time, and give the member the option to make up the contributions. If the member elects to make up the **MPAT** contributions he/she will be instructed to remit payment to PERS. Upon receipt of the make up payment from the member, PERS will then invoice the employer for employer contributions due, then update the employee's PERS member account and reflect the corresponding service credit.

EPPT (Employer Paid Pre-Tax) or MPPT (Member Paid Pre-Tax): The employer is responsible for submitting the "make-up" contributions. These contributions will equal the

amount the employer would have submitted **had the member not left for military service**. Once the employer submits the [USERRA Certification form](#) and the USERRA-subject salary to PERS, PERS will calculate the amount of the contributions due and send an invoice to the employer. The employer then has 30 days to submit the contributions in a lump sum to PERS. Once the contributions are received, PERS will update the employee's PERS member account and reflect the corresponding service credit.

Q5. How are member paid employee contributions (MPAT or MPPT) or employer paid employee contributions (EPPT) submitted for USERRA-qualified service January 1, 2004 and beyond?

- A. **MPAT (Member Paid After Tax):** *The member is responsible for submitting the “make up” contributions. The member may make-up any or all the employee contributions that would have been made **had he/she never left for qualifying military service**. The contributions may be **paid by the member in a time frame that, beginning with the date of reemployment, is three times the length of the military service up to a maximum of five years**. Example: If the employee was gone for one year for qualifying military service, the employee will have three years from the date of reemployment to submit the contributions.*

PERS will notify the member that their employer has submitted the [USERRA Certification form](#), calculate contributions due for the USERRA-qualifying service time, and give the member the option to make up the contributions. If the member elects to make up the **MPAT** contributions he/she will be instructed to remit payment to PERS. Upon receipt of the make up payment from the member, PERS will then invoice the employer for employer contributions due, then update the employee's Individual Account Program (IAP) account and reflect the corresponding service credit.

EPPT (Employer Paid Pre-Tax) or MPPT (Member Paid Pre-Tax): The employer is responsible for submitting the “make-up” contributions. USERRA-qualifying service after January 1, 2004 must be reported through the EDX system.

When the member leaves your employment to fulfill a military obligation **you must submit a DTL1 (Demographic) record**. You will establish a leave segment by using the status code “05-Military Leave” and the Status Date will be the date the employee began his/her leave.

When the employee returns from military duty, you must submit **another DTL1 (Demographic) record**. In this DTL1 record, you will close the member's original leave segment by using the status code “08-Return from Leave” and the Status Date will be the member's **first day of reemployment**. The “08-Return from Leave” DTL1 (Demographic) record **must post before regular wages from re-employment can be reported**. You must also determine if the member qualifies for reemployment under USERRA. If the individual is qualified for reemployment under USERRA, the [USERRA Certification form](#) **must be submitted to PERS**.

After receiving and processing the [USERRA Certification form](#), PERS will activate a USERRA leave segment and notify you of this change to the member's account.

Your next step is entry of USERRA make-up employee contributions. Contributions that

would have been made by the employer (EPPT) are reported by **creating DTL2 (Wage and Service) records, using wage code “11-USERRA Qualifying Wages,” covering each affected reporting period while the member was on USERRA-qualifying military leave.** The DTL2 records for each of those reporting periods will supply the missing data that would have been reported had the member never left for military service.

What you will report in those DTL2 records are the **estimated wages** that the member **would have earned** in each of those reporting periods, if the member had not been on military duty.

DTL2 (Wage and Service) records using wage code “11-USERRA Qualifying Wages” must be submitted ONLY on a regular report. These records cannot be submitted on a Demographic and Adjustment report.

Here is an example:

The member worked for a PERS-participating employer until February 21, 2004, then left for military duty and spent one year on active duty with the Oregon Army National Guard. The member returned to his/her PERS-covered employment on February 16, 2005.

The employer pays wages monthly. Consequently, at the end of February 2004 the employee is paid regular wages earned from February 1 through February 20, 2004. The employer submits a DTL2 record covering the wages paid February 1 through 20, 2004. The employer also submits a DTL1 record with a status code “05-Military Leave” and a status date of February 21, 2004, the day the member began military leave.

After a year of military duty, the member returns to his or her previous employer on February 16, 2005. At this time, a DTL1 (Demographic) record with wage code “08-Return from Leave” and a status date of February 16, 2005, the first day of reemployment, must be submitted. **(This DTL1 record must post before any regular wages can be reported).** The member receives regular wages for the period of February 16 through the end of February 2005. The employer determines the member’s year of active duty was USERRA qualifying time, and submits the [USERRA Certification form](#) to PERS.

So, for the February 2005 pay period, the employer creates two DTL2 records, one for wages the employee actually earned from February 16 until the end of the month, and another for the wages the member **would have received from February 1 through 15 if the member had not been on active duty with the military.** The second DTL2 record, covering February 1 through 15, should have a wage code “11-USERRA qualifying wages.” Additional DTL2 records for **each reporting period covering the member’s year of active duty must also be reported.**

Make-up contributions pursuant to USERRA are applied to the year in which the salary **would have been earned, not the year the make-up contributions are paid.**

For PERS Chapter 238 Program members (Tier One or Tier Two), make-up employee contributions for service in the uniformed services through December 31, 2003 are credited to the member’s account in the PERS Chapter 238 Program. Make-up employee contributions for service in the uniformed services on January 1, 2004 and after are credited

to the member's Individual Account Program (IAP) account.

Currently, only employee and employer contributions are included in USERRA-related invoices from PERS. When contributions are submitted in a timely manner, earnings or losses begin to accrue on make-up contributions only after those contributions have been paid. When contributions are not submitted in a timely manner, earnings or losses that should have been credited to member accounts will be invoiced for separately.

Q6. Who do I contact if I have problems with USERRA reporting?

A. Contact the PERS employer call center at 503-603-7788 or toll free 1-888-320-7377 (*follow voicemail instructions*) or e-mail to pers.edx.support@state.or.us