

## **Uniformed Services Employment and Reemployment Rights Act (USERRA)**

**Updated for the Heroes Earnings Assistance and Relief Tax Act (HEART) of 2008.** HEART requires “differential wage payments” to be treated as compensation for all purposes, including retirement plan employee and employer contributions. A “differential wage payment” is any payment: 1) made by an employer to an individual while the individual is performing service in the uniformed services **on active duty for a period of more than 30 consecutive days**; and 2) representing all or a portion of the wages that the individual would have received from the employer if the individual were not performing service in the uniformed services. The HEART Act provisions apply to “differential wage payments” made after December 31, 2008.

The total of "differential wage payments" and USERRA-subject wages can **never be more than the total wages the individual would have earned as an employee during the period of military service.**

### **Uniformed Services Employment and Reemployment Rights Act (USERRA) and how it's applied.**

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.

Reemployment rights and benefits upon completion of a period of duty in the United States uniformed services are not automatic. The member must meet certain criteria to qualify for these reemployment rights and benefits. **Determining the member's eligibility for USERRA reemployment rights is the employer's responsibility.** Information on eligibility for USERRA reemployment rights can be found at the U.S. Department of Labor's web site at [www.dol.gov/vets/#ussera](http://www.dol.gov/vets/#ussera).

Once a member is reemployed under USERRA, he/she is entitled to the applicable retirement benefits provided under Oregon Administrative Rules (OAR) 459-011-0100 and 459-011-0110 (PERS Tier One/Tier Two), 459-075-0100 (OPSRP Pension), and 459-080-0100 (IAP). These OARs can be accessed through the PERS employer website, [www.oregon.gov/pers/emp/index.shtml](http://www.oregon.gov/pers/emp/index.shtml)

### **Salary and contributions subject under USERRA.**

USERRA-subject 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 web site at [www.dol.gov/vets/#ussera](http://www.dol.gov/vets/#ussera).

The total of "differential wage payments" and USERRA-subject salary can **never be more than the total wages the individual would have earned as an employee during the period of military service**, so USERRA-subject salary ultimately reported to PERS can **never include the amount of any "differential wage payments"**. Contributions on "differential wage payments" will be treated as USERRA contributions. Contributions on "differential wage payments", plus contributions on USERRA-subject salary, cannot exceed the contributions that the employee would have made if the member had remained employed.

**Employee contribution type affects reporting of USERRA contributions.**

There are three types of employee contributions, **MPAT (Member Paid After Tax)**, **MPPT (Member Paid Pre Tax)**, and **EPPT (Employer Paid Pre Tax)**. Regardless of type of contribution, the employer must determine if the member's service time is USERRA-qualifying and submit the USERRA Certification form before any employee contributions can be made or service/retirement credit granted. The PERS USERRA Certification form can be found through the "Employer Forms" link on the PERS employer website.

**For Ch.238 Tier1/Tier2 members:**

**MPAT and MPPT:** The member has the option to make up the contributions, which represent any or all the contributions that **would have been made had he/she never left for qualifying military service**. Beginning at reemployment, the member has three times the length of military service, but not more than five years, to pay the "make up" contributions. Contributions during this period can be made **only if the member remains employed by the "post-service" employer. "Make up" contributions must stop if the member terminates from the "post-service" employer during this period.** Example: If the member was gone for one year for qualifying military service, the member will have three years from the date of reemployment to submit make-up contributions.

PERS will calculate contributions on any military service time the employer indicates is USERRA-qualified, and will inform the member of the amount of contributions permitted and how to remit payment. Upon receipt of the make up payment from the member, PERS will update the employee's Individual Account Program (IAP) account and invoice the employer for employer contributions due.

Service credit will be granted only if the make-up contribution payment is made.

**EPPT:** The employer is responsible for submitting the "make-up" contributions. Both IAP employee account contributions and employer contributions will be reported through EDX and appear on the employer's online statement.

Service credit will be granted when the make-up contribution payment is made.

**For OPSRP members:**

**MPAT and MPPT:** The member has the option to make up the contributions, which represent any or all the contributions that **would have been made had he/she never left**

**for qualifying military service.** Beginning at reemployment, the member has three times the length of military service, but not more than five years, to pay the "make up" contributions. Contributions during this period can be made **only if the member remains employed by the "post-service" employer. "Make up" contributions must stop if the member terminates from the "post-service" employer during this period.** Example: If the member was gone for one year for qualifying military service, the member will have three years from the date of reemployment to submit make-up contributions.

PERS will calculate contributions on any military service time the employer indicates is USERRA-qualified, and will inform the member of the amount of contributions permitted and how to remit payment. . Upon receipt of the make up payment from the member, PERS will update the employee's Individual Account Program (IAP) account.

Regardless of whether the member pays the make up contributions, the employer will be invoiced for OPSRP Pension Program employer contributions. Retirement credit will be automatically granted.

**EPPT:** The employer is responsible for submitting the "make-up" contributions. Both IAP employee account contributions and employer OPSRP Pension Program contributions will be reported through EDX and appear on the employer's online statement.

The employer will be invoiced for OPSRP Pension Program employer contributions. Retirement credit will be automatically granted.

**The USERRA reporting sequence:**

When the member leaves for military service **submit a DTL1 status code 05-On Military Leave.** The Status Date will be the date the employee began his/her leave. If you, the employer, elect to make "differential wage payments" while the member is absent for military service, submit **DTL2 wage code 08-Contributions/No Service** for each reporting period during the member's absence for military service.

Remember that the total of "differential wage payments" and USERRA-subject wages can never be more than the wages the individual **would have earned** as an active employee during the period of military service.

When the employee returns from military service submit a **DTL1 status code 08-Return from Leave.** The Status Date will be the member's **first day of reemployment** and all records should be in the **correct date sequence, with no gaps in dates.** You must now determine if the member qualifies for reemployment under USERRA. If the individual is qualified for reemployment under USERRA, **submit the USERRA Certification form to PERS.** After receiving and processing the **USERRA Certification form**, PERS will activate a USERRA employment segment and notify you of this change to the member's account.

Your next step is entry of USERRA make-up employee wages and contributions in the USERRA employment segment. **Employee wages and contributions that would have**

been made are reported by submitting DTL2 wage code 11-USERRA Qualifying Wages records, covering each reporting period while the member was on USERRA-qualifying military leave. The DTL2 records for each of those reporting periods will supply wage, hours and contribution data that would have been reported had the member never left for military service.

**DTL2-11/USERRA Qualifying Wages records must be submitted ONLY in a regular report.** These records cannot be submitted in a Demographic and Adjustment report.

The USERRA reporting sequence is complete when DTL2-11 records have been submitted for each reporting period during the member's USERRA-qualified military service

**USERRA reporting example:**

The member works for their PERS-participating employer through February 20, 2009. On February 21, 2009, the member begins military service, spending one year on active duty with the Oregon Army National Guard. The member returns to his/her PERS-covered employment on February 22, 2010.

This employer is a "monthly" EDX reporter (EDX regular reports due the last day of each month). Here are the records the employer submits for February 2009:

DTL1-05/Military Leave  
Status date: 02/21/2009  
(submitted in a Demographics & Adjustment report as soon as the member informs the employer of the military call-up)

DTL2-01/Regular wages  
Work Period Begin: 02/01/2009  
Work Period End: 02/20/2009

\*DTL2-08/Contributions/No Service  
Work Period Begin: 02/21/2009  
Work Period End: 02/28/2009

\*This employer elects to make "differential wage payments" while the member is on military leave. The "differential wage payments" represent all, or a portion, of the wages the individual would have been paid had the individual not gone on military leave. The employer's regular reports from March 2009 through January 2010 will contain DTL2-08 records for each of those months the employer elects to make differential payments. These records would not be submitted if the employer chose not to make "differential wage payments" while the member was on military leave.

This member returns from military leave and resumes active employment with this employer on February 22, 2010. Here are the records the employer submits for February 2010:

DTL1-08/Return from Leave  
Status date: 02/22/2010

DTL2-01/Regular wages  
Work Period Begin: 02/22/2010  
Work Period End: 02/28/2010

The employer determines the military leave from February 21, 2009 through February 21, 2010 is USERRA qualified and submits the USERRA Certification Form to PERS. PERS changes the military leave segment to a USERRA employment segment in the member's EDX account and informs the employer they can begin submission of DTL2-11/USERRA Qualifying Wages records. **These records must be submitted for each reporting period during the member's absence for military service**, and are applied to the year in which the salary **would have been earned, not the year the make-up contributions are paid**. DTL2-11 records can be submitted only in Regular Reports.

USERRA reporting is complete when DTL2-11 records have been submitted for each reporting period during the member's USERRA-qualified military service period. PERS will then notify the member by letter that USERRA contributions have been added to the member's IAP account and service credit has been awarded. Ch.238 Tier1/Tier2 service credit is awarded only if USERRA contributions are paid, but OPSRP Pension Program retirement credit is awarded regardless of USERRA contribution payment.

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.

**If you have problems with USERRA reporting**, contact the PERS employer call center at 503-603-7788, toll-free at 888-320-7377, or e-mail: [pers.edx.support@state.or.us](mailto:pers.edx.support@state.or.us)