

TPS pensioninsider.com newsletter

PROVIDING SUPERIOR SERVICE AND SUPERIOR ADVICE

DOL Issues Revised Notice Required on Rights of Your Employees Called for Military Service

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The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) applies to virtually all employers and gives rights to employees who leave their civilian jobs to serve in the "uniformed services." Employees who perform service must be in the same position with respect to employment and benefits that they would have been in if they had not left to perform military service.

The uniformed services are broadly defined to include the regular armed services including the Coast Guard, the reserves, the National Guard, and the uniformed corps of the U.S. Public Health Service. In general and with a number of exceptions, if the employee gives advance notice of his or her deployment and serves for up to five years, he or she must be treated as if he or she is on a leave of absence. These rules affect retirement plans, as well as other areas.

Have you notified your employees?

The Veterans Benefits Improvement Act of 2004 requires employers to give employees notice of their rights and employers' obligations under USERRA. Employers may post the notice where employee notices are customarily placed. Alternatively, employers may give the full text of the required notice to employees in other ways, including handing or mailing the notice to employees or distributing through electronic mail. The notice is available in poster form from the Department of Labor's website. This requirement became effective March 10, 2005.

On December 19, 2005, VETS published final regulations, and, in response to comments on the interim guidance, made two minor modifications in the text of the notice.

The modifications made include the addition of language that USERRA protects certain types of service in the National Disaster Medical System and reflect that the Office of Special Counsel (OSC) will handle some USERRA claims against federal executive agencies.

The final regulations are effective on January 18, 2006. If you did not previously provide the required USERRA notice to your employees, you should do so and may download the poster text from the DOL web site at: <http://www.dol.gov/vets/>.

If you previously posted the notice, you should substitute the new poster in order to be in technical compliance with the final regulations.

How USERRA Impacts Retirement plan contributions:

USERRA applies to all types of retirement plans, including qualified and nonqualified plans, SEPs, SIMPLEs, 457s, and 403(b)s. If the individual returns to his or her job, the employee must be treated as employed (for up to 5 years) while in the service for purposes of eligibility, accrual and vesting, and must be credited with the employer's contributions that would have been made during his or her absence. This includes matching, profit sharing and money purchase contributions, and defined benefit accruals. For 401(k) contributions, the employee has a period of time after reemployment (up to 5 years) to make these contributions. Earnings and forfeitures are not required to be credited to the employee. The compensation that must be used to calculate the contributions is the compensation that the employee would have earned if he or she had remained actively employed.



