The effects of military deployments on the administration of a retirement plan

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With the influx of military service members returning to the civilian work force as part of the U.S.’s overall military drawdown, plan sponsors and other fiduciaries need to be mindful of the responsibilities that a service member’s call to and return from active duty adds to the administration of a retirement plan.

The two significant pieces of legislation that one needs to be mindful of are the Servicemembers Civil Relief Act (SCRA) (formerly the Soldiers’ and Sailors’ Civil Relief Act) and the Uniformed Services Employment and Reemployment Rights Act (USERRA). Both regulations provide certain protections to minimize disruptions in the lives of service members and to prevent discrimination based on prior or current military service.

SCRA
SCRA protects military members by allowing them to serve without suffering financial or legal repercussions at home. In particular, many active duty personnel are entitled to a 6% interest rate cap on debts or financial obligations of any kind (except federally guaranteed student loans) incurred prior to active military duty, if certain notice and other requirements are met.

USERRA
USERRA protects the employment and pension rights of individuals who are called into active military service. With limited exceptions, employers must reemploy individuals who are called into active military duty within specified time frames upon an employee’s return.

USERRA protects a plan participant’s:
• Accrual and vesting rights
• Rights to defer for periods of missed employment
• Rights to missed employer contributions
USERRA also permits the employer to provide certain protections related to loans.

Employment protection
While this does not have a direct effect on the administration of an employer’s retirement plan, it is important to note that, under USERRA, an individual has a right to reemployment when returning from active military duty as long as the following rules are met:
• When possible, prior to an individual’s military leave, advance written or verbal notice that the individual will be serving in the armed services is provided to the employer.
• The cumulative military leave is less than five years. (The five-year limitation on the length of service does not apply if the individual was involuntarily ordered to or retained on active duty.)
• The individual must submit an application for reemployment within certain time periods. (For example, an individual serving more than 180 days must apply for reemployment within 90 days following the end of their service.)
• The individual was not separated from military service with a disqualifying or dishonorable discharge.

Retirement protection

Protection of service and vesting rights
While plan participants are on military leave, they are entitled to the following:
• Vesting — They must continue to earn vesting service during military leave.
• Break in service — There will not be a break in service because an individual is called to active military duty.
• Accrual of benefits — The service that a plan participant would have accrued during their military leave will count as service with the employer for a defined benefit or a defined contribution plan that utilizes a formula that considers service as a component of the benefit accrual or contribution formula.

Contributions
Employee contributions
Subject to the following restrictions, plan participants must be given the opportunity to make up elective deferral, after-tax, and
catch-up contributions when they return to active participation in the plan:

- The contributions may not exceed the amount that the participant would have been permitted to contribute had he or she worked for the employer throughout the period of military leave.
- The time frame for making these contributions is three times the length of the military service, up to a maximum of five years, measured from the reemployment date.

The employer is not required to provide retroactive earnings on these contributions.

**Employer contributions**

**Profit Sharing and Money Purchase Plan Contributions** — A plan participant is entitled to receive any profit sharing or money purchase plan contributions that would have been received had he or she not been away on military leave. These contributions will generally need to be made within 90 days of the employee’s reemployment date.

**Matching Contributions** — If a plan provides for matching contributions, the make-up deferral contributions must be matched at the same rate that the plan participant would have received if not for the military leave.

To calculate the amount of makeup contributions and allocations, assume the plan participant earned compensation at the same rate they would have received during the period of military service. If that rate is not reasonably certain, the participant’s average rate of compensation during the 12-month period immediately preceding the military service should be used.

For purposes of nondiscrimination testing, make-up contributions are not taken into account in either the year in which they are made or the year to which they relate. However, make-up contributions are subject to the applicable limitations (e.g., §§402(g), 414(v), and 415 limits) for the year to which they relate.

If a plan allocated forfeitures during a plan participant’s military leave, such forfeitures do not have to be allocated to military employees upon their return.

**Plan loans**

With respect to plan loans, the most important requirement is provided under SCRA. During the period of military service, while interest must still accrue on the loan; if the Participant notifies the Plan Administrator and sends them a copy of their military orders, the interest rate that can be charged during the military leave must be capped at 6%, regardless of whether payments continue during the leave. Any adjustment to the interest rate needs to be made retroactive to the first day of active duty, and a participant can request it up to 180 days after their release from active duty.

In addition to the 6% interest cap provided under SCRA, USERRA expands on plan loan protections. While it is not a requirement, the employer may suspend a participant’s obligation to repay any loan during a period of military leave. The suspension of loan payments may extend through the entire length of the military leave period without the loan being deemed a distribution.

Upon returning from military service, the plan can allow for repayment under the following options:

- The employee may pay the same periodic amount over the same term of the loan and make a lump-sum payment at the end of the loan term.
- The employee may reamortize the loan for the same term or extend the term of the loan. Depending on the term, reamortization may change the periodic payment over the term of the loan. If the employee chooses to extend the term, any extension beyond the maximum five-year term may not exceed the length of the military leave. When the loan is reamortized, the accrued interest must be included in the new principal amount.

These rules apply only to loans issued before the employee begins his or her leave.

**Conclusion**

SCRA and USERRA provide important protections for individuals serving in the military. The application of these protections for a particular retirement plan may sometimes be unclear; therefore, it is imperative that employers become better educated in dealing with employees returning from active military duty as they need to make sure they take the steps necessary to provide returning service members with the retirement benefits to which they are entitled.

**Additional resources**


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