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Retirement plan obligations to reemployed service members and veterans

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On August 8, 2019, the Department of Labor's Veterans' Employment and Training Service released "USERRA Fact Sheet 1" to help employers better understand their retirement plan obligations to reemployed uniformed service members and veterans. Employers should confirm their employment practices and policies affecting veterans and employees with military service conform to the guidance released in the Fact Sheet.

Background

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), enforced by the Department of Labor, generally prohibits employment discrimination against job applicants and employees because of their military service or obligations. USERRA protects certain reemployment rights and benefits for members of the uniformed services (including veterans and members of the Reserve and National Guard) and provides that employers (both public and private) must make "reasonable efforts" to reemploy returning veterans in their prior jobs or help them qualify for different jobs. (For additional background on USERRA, see our February 24, 2012 and April 5, 2012 *FYI*s.)

Fact sheet guidance

USERRA applies to sponsors of defined benefit, defined contribution (excluding federal Thrift Savings), single-employer and multiemployer plans. The DOL issued a Fact Sheet with responses to frequently asked questions to provide guidance to employers concerning the application of USERRA to these plans. Some highlights of the Fact Sheet include:

- Employers are required to rehire eligible returning service members into the position and benefits they would have had if not for their military service (i.e., restore eligibility, vesting and credited service).

- Employers must treat a service member’s entire period of absence due to or necessitated by military service as continuous employment (including certain periods of time pre-and-post military service).
- Reemployed service members may make up all or part of their missed contributions or elective deferrals, but are not required to do so.
- For plans in which employees are not required or permitted to contribute, employer contributions attributable to the reemployed service member must be made by the later of: (i) 90 days after reemployment, or (ii) when plan contributions are normally due for the plan year in which the military service occurred.
- For employee contributory plans, employers must make contributions that are contingent on the service member’s contributions or elective deferrals only to the extent that the service member makes up those contributions to the plan.
- Employers that offer pension benefits where employee compensation determines the amount of the employer contribution or benefit amount are required to perform a calculation to determine the reemployed service member’s pension entitlement. The calculation requires the employer to determine the rate of compensation the service member would have received by analyzing the number of hours the service member would have likely worked and how much service would have been earned based on the service member’s work history leading up to the military-related absence. If an employer cannot determine the service member’s compensation with “reasonable certainty” using the above calculation, the employer is required to use the average rate of compensation the service member received during the preceding 12 months (“12-month look-back”).

In closing

Employers should review the DOL Fact sheet with an eye towards: (i) updating employment practices and policies that affect veterans and other employees with military service, (ii) reminding applicable managers of the rights afforded employees that are reemployed following military service and (iii) updating plan actuaries and relevant third party administrators about eligibility service, benefit accruals and vesting determinations made for reemployed employees coming back from qualified military service.

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