

FPPA Eligibility for Members on Leave of Absence

*Including
Military Leave*

Fire
and
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Pension
Association
of Colorado

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10.22.12

The following is information regarding eligibility for members on leave of absence, including military leave. This information specifically addresses the requirements of federal and state law as they affect pension benefits under the statewide plans administered by FPPA.

Contributions & Eligibility

Statewide Death & Disability Plan (SWD&D)

The disability and survivor benefits for members hired prior to January 1, 1997 have been funded entirely by the State of Colorado and not by employer or member contributions. Benefits for those hired on or after January 1, 1997 are funded through employer and/or member contributions. Benefits are available to active members of the SWD&D Plan as well as members who are on an authorized leave of absence from their covered employment, including an authorized leave of absence for military duty with exceptions noted below.

A member may continue to be covered by the SWD&D Plan as long as the required contributions are paid during the periods the member is on an authorized leave of absence. Members on military leave for service that is covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA) are eligible to be covered under the SWD&D Plan up to a maximum of five years. Members on other forms of leave of absence are eligible to be covered under the SWD&D Plan up to a maximum of two years. Coverage is suspended if contributions are not received by FPPA.

If the employer is paying 100% of this contribution, please continue to remit the SWD&D contribution on your regular payroll cycle, using the member's base salary immediately prior to the leave of absence. If the employer contributes partially or the member pays the entire contribution, the employer should remit the full SWD&D contribution during the authorized leave of absence using the member's base salary immediately prior to the leave of absence. Contributions for members receiving differential pay from their employer must be based on the member's base salary prior to the beginning of the authorized leave and not on the amount of the differential pay.

The employer should notify FPPA of leaves of absence.

Retirement Plan

The employer may choose to continue to submit to FPPA the employer's normal retirement contributions to a defined benefit plan or allocations to a defined contribution plan while the FPPA member is away on leave of absence, including military leave.

For members on military leave, service credit will be awarded to the returning veteran only upon the repayment of employer and employee contributions as required under the terms of USERRA and the FPPA Rules & Regulations and Plan Documents. If the member does not return to work for the employer after military service or otherwise fails to comply with the reporting and repayment provisions of USERRA and the FPPA Rules & Regulations and Plan Documents, the employer will receive a credit from FPPA for the contributions made on behalf of the veteran. FPPA allows a member who returns to work following an authorized military leave of absence up to one year to repay employee contributions when the leave period is 3 months or less, and up to a maximum of 5 years after the member's return to service from the member's last military leave when the leave period is greater than 3 months.

For other forms of leave, service credit will be awarded to a member if FPPA receives member and employer contributions within 12 months of the Member's return to service. The employer is not required to pay their portion, except for military leave, but in order for the member to receive service credit, the member would need to remit the employer portion if the employer does not remit them. If the member does not return to work for the employer after a leave of absence or the member does not repay their contributions, the employer will receive a credit from FPPA for the contributions made on behalf of the member.

Any differential pay received by Members during any leave of absence, by itself, is not pensionable. Contributions should only be collected on it and service credit awarded for it if full contributions are being paid and the member is granted full service credit.

FPPA asks that employers provide the names of members on military leave for whom employer con-
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tributions are being submitted, and the amount of the contributions. This should be done using the regular contribution reporting process. In order to keep the member's records current and comply with USERRA regulations, FPPA should be notified immediately upon the employee's return to work.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

Background

The reemployment rights of employees on military leave are governed by the Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA was passed in 1994 to clarify the rights and benefits of reservists returning from Operation Desert Storm in Iraq. Members must comply with the requirements of USERRA in order to receive the benefits provided under this federal law. Generally, those benefits include reemployment without loss of seniority or pension benefits.

In order for employees on military leave to take advantage of the reemployment rights under USERRA, they must notify their employers (if confidentiality does not preclude it), either orally or in writing, that they will be absent from work because of military duty. Also, for a veteran to be entitled to the benefits provided under USERRA, the military leave of absence cannot exceed five years unless FPPA finds good cause has been shown to extend the five year maximum period. The employee must apply for reemployment within a reasonable period following an honorable discharge.

Re-employment

The length of a returning veteran's military service determines the time period for seeking re-employment following discharge. If the service is for 30 days or less, a veteran must apply for reemployment or report to his or her place of employment no later than the beginning of the first full work period on the first full calendar day following completion of service, plus eight hours to allow for safe transport home. If the military service lasts more than 30 days but less than 181 days, a returning veteran must seek reemployment no later than 14 days following the end of service. For military service periods of 181 days or more, reemployment must be sought no later than 90 days following discharge. In the event of an injury, a veteran generally has up to two years to apply for reemployment.

Retirement Benefits

USERRA provides that for the purpose of calculating pension benefits and contributions, compensation is to be determined as if the leave had not occurred. Also, USERRA requires an employer to fund any required employer accruals to a defined benefit plan and allocations to a defined contribution plan for a returning employee as if he or she had never taken leave. However the accruals and allocations are conditioned on the employee making up any required employee contributions. Thus, an employer will have to make up any unpaid contributions for the returning employee, provided the employee makes up the missed deferrals or contributions. The employee must make up the contributions within one year when the leave period is 3 months or less, and a maximum of 5 years after the member's return to service from the last military leave of absence when the leave period is greater than 3 months.

Members and employers who wish to learn more about USERRA can visit <http://www.dol.gov/elaws/userra0.htm>.

It is the employer's responsibility to inform returning employees of their rights under USERRA.

The FPPA rule on service credit and prepayment of contributions during leaves of absence can be found in FPPA Rule 301.061 effective January 1, 2013, Statewide Hybrid Rule 6.09 (d), Rule 2.07 (d) of the CSNHPP Rules, Article V of the Statewide Money Purchase Plan, and Articles 10.02 of the Colorado Springs New Hire Pension Plans.

Disclaimer: Provided for informational purposes only. FPPA Statutes, Rules, Regulations, and Plan Documents are controlling.