



# Military Service and USERRA

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides members of the uniformed services with certain rights in areas of employment, retirement and pension benefits and health benefit coverage. USERRA protects employees who leave for and return from uniformed service within a five-year period, including the reserves of any of the U.S. Armed Services, provided certain requirements are met. On December 19, 2005, the Department of Labor published final regulations on USERRA and January 18, 2006 was the effective date of these final rules.

In addition to employee benefit plans covered under the Employee Retirement Income Security Act of 1974 (ERISA), USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by a State, government entity, or church for its employees.

## Overview of protections provided by USERRA

- **Healthcare:** Employees serving in the uniformed services may purchase continued healthcare coverage for themselves and their dependents under their employer's plan for the lesser of 24 months or the period of military service. Even if the employee does not elect to continue coverage during military service, the employee is entitled to immediate reinstatement of healthcare coverage generally with no imposition of a waiting period or exclusions for pre-existing conditions.
- **Reemployment:** Employees returning from active duty should be promptly reemployed in the position they would have had but for the military service, as long as they return to work or apply for reemployment in a timely manner after conclusion of service.
- **Retirement Benefits:** Returning employees must be treated as if they had been continuously employed. Upon reemployment, the employee is treated as not having a break in service with the employer or employers maintaining a pension plan, for purposes of participation, vesting and accrual of benefits. Therefore, the period of military service must be counted as covered service with the employer for eligibility, vesting and benefit accrual purposes.
- **Defined Contribution Plans:** If the employee is enrolled in a contributory plan, the employee is allowed (but not required) to make up the missed contributions or elective deferrals. These makeup contributions or elective deferrals must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the

repayment period not to exceed five years. Makeup contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employer.

If the employee's plan is contributory and the employee does not make up the contributions or elective deferrals, the employee will not receive the employer match or the accrued benefit attributable to such contributions. The employer is required to make contributions that are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up the payments to the plan. Any employer contributions that are contingent on or attributable to the employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

The employee cannot pay interest when the missed contributions or elective deferrals are made up. The employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had the employee remained continuously employed during the period of service. It is also important to note that employees are not allowed to repay previous distributions to defined contribution plans.



Your future. Made easier.®

## MILITARY SERVICE AND USERRA

- **Loans:** A defined contribution plan may permit the suspension of loan repayments for the period in which the employee is in military service. A plan may extend this suspension to all employees in the military service, regardless whether they meet all the reemployment rights under USERRA. Other military leave laws address appropriate loan rates.



- **Contributions while on Active Duty:** The proposed regulations under Section 415 released May 31, 2005 address the ability of employees on military leave to make pension contributions based on military leave. National Guard and Reserve members who receive differential pay from their employers can contribute to their employer's retirement plan while on active duty. According to the preamble to the proposed regulations, taxpayers may rely upon these modifications pending issuance of the final regulations.

### Employee's Responsibilities

- Provide advance written or oral notice of military service to employer;
- Have had no more than 5 years of total absences for military service while with that particular employer;
- Report to the employer, or submit a reapplication for reemployment within the prescribed time frame; and
- Have not been separated from service with a disqualifying discharge or under other than honorable conditions.

### Additional Resources

Information is available to both employees and employers via the Department of Labor's Employee Benefit Security Administration (EBSA) Web site at [www.dol.gov/ebsa](http://www.dol.gov/ebsa), which contains the following recommended links for USERRA:

- Compliance Assistance – [www.dol.gov/dol/compliance/comp-userra.htm](http://www.dol.gov/dol/compliance/comp-userra.htm)
- Introduction to USERRA – [www.dol.gov/elaws/vets/userra/userra.asp](http://www.dol.gov/elaws/vets/userra/userra.asp)
- Uniformed Services Employment and Reemployment Rights Act (USERRA) – [www.dol.gov/vets/usc/vpl/usc38.htm](http://www.dol.gov/vets/usc/vpl/usc38.htm)
- Non-Technical Resource Guide to USERRA [http://www.dol.gov/vets/programs/userra/Right\\_Act4\\_2005.pdf](http://www.dol.gov/vets/programs/userra/Right_Act4_2005.pdf)
- USERRA Advisor – <http://www.dol.gov/elaws/vets/userra/mainmenu.asp>
- Department of Labor regulations issued December 19, 2005 – <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-23961.pdf>

The non-ING Web site links mentioned in this material are provided for your information only. Although deemed reliable, accuracy cannot be assured. ING does not exercise control over, endorse nor accept responsibility for the content, product and/or services provided at non-ING sites.

**ING has developed a form to make it easier to determine how much extra an employee can defer under USERRA. Want to know more? Please click the Back button on your browser and open the "Request to Make Up Salary Deferrals" form that is located adjacent to this document.**

Not FDIC/NCUA/NCUSIF Insured	Not a Deposit of a Bank/Credit Union	May Lose Value	Not Bank/Credit Union Guaranteed	Not Insured by Any Federal Government Agency
------------------------------	--------------------------------------	----------------	----------------------------------	--

[www.ing-usa.com](http://www.ing-usa.com) [www.ingretirementplans.com](http://www.ingretirementplans.com)

This material was created to provide accurate and reliable information on the subjects covered. It is not intended to provide specific legal, tax or other professional advice. The services of an appropriate professional should be sought regarding your individual situation. **IRS Circular 230 Disclosure:** These materials are not intended to be used to avoid tax penalties, and were prepared to support the promotion or marketing of the matters addressed in this document. The taxpayer should seek advice from an independent tax advisor. Insurance products, annuities and funding agreements issued by ING Life Insurance and Annuity Company ("ILIAC"), One Orange Way, Windsor, CT 06095, or annuity products are issued by ReliaStar Life Insurance Company, each of which is solely responsible for meeting its obligations. Plan administrative services provided by ILIAC or ING Institutional Plan Services, LLC. All companies are members of the ING family of companies. Securities distributed by or offered through ING Financial Advisers, LLC (member SIPC) or other broker-dealers with which it has a selling agreement. Only ILIAC is admitted and its products offered in the State of New York. © 2009 ING North America Insurance Corporation. C09-0330-002 (5/09)



[WWW.ING-USA.COM](http://WWW.ING-USA.COM)