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Pension Entitlements Under USERRA

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Q: I am a Minnesota state employee. I left that job when I was recalled to active duty in October 2001. I was released from active duty in October 2002, and I promptly went back to my state job.

I will probably make a career out of this state job, and I want that year of active duty to be treated as continuous employment for pension purposes. My pension plan is contributory, meaning that I pay money in from each paycheck. I did not pay money in during the year that I was recalled to active duty. I understand (from reading Law Reviews 4, 9, and 40) that I will be required to make up the employee contributions that I missed. Please elaborate on what I need to do.

A: The pertinent requirement is as follows: "A person re-employed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any payment to the plan described in this paragraph shall be made during the period beginning with the date of re-employment and whose duration is three times the period of the person's service in the uniformed services, such payment period not to exceed five years." [38 U.S.C. 4318(b)(2)]. Because your period of service was one year, you have three years to make up the missed employee contributions.

Q: What about interest? The state wants to charge me interest on these payments, unless I pay the entire amount out of my first paycheck after returning from service.

A: If you make up the payments within three years, the State is not permitted to charge you interest. Although this point could be made more clearly in the statute itself, it is reasonably clear in the legislative history. In its report, the House Committee on Veterans' Affairs stated, "No interest or penalty shall be charged on the employee contribution." House Report No. 103-65, 1994 United States Code Congressional and Administrative News 2449, 2469.

Q: In the subsection of USERRA quoted above, reference is made to "employee contributions or elective deferrals." What is the difference

between a contribution and an elective deferral?

A: An elective deferral is made with pre-tax funds, and a contribution is made post-tax. If you had remained continuously employed, you would have paid pre-tax funds into the pension plan. Accordingly, you are entitled to use pre-tax funds to pay into the pension plan, to make up for missed contributions. You should try to do so, because this will save you money.

For example, assume that you make $50,000 per year and you must pay in $1,000 to make up for the missed payments. If you can make this payment pre-tax, you will be taxed on $49,000, not $50,000. ROA

* Military title used for purposes of identification only. The views expressed in these articles are the personal views of the author and are not necessarily the views of the Department of the Navy, the Department of Defense, the Department of Defense or the U.S. government.