

**Number 107, January 2004:
Pension Entitlements Apply to Training Duty**

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Q: I am the personnel manager of a major airline. We are trying to comply with our obligations under the Uniformed Services Employment and Reemployment Rights Act (USERRA), and we have found your Law Review articles to be most helpful. When a pilot (or any other employee) is called to active duty and then returns, we make up the employer's contributions to the employee's pension plan account after he or she returns from service.

We have no problem doing this when a pilot returns from a mobilization. Are we also required to make these payments when a pilot misses a day, or a few days, because of Reserve or National Guard training? That is an administrative burden.

A: USERRA applies to anyone who leaves a job for voluntary or involuntary "service in the uniformed services." That phrase is defined in section 4303(13) of USERRA, as follows: "The term 'service in the uniformed services' means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from a position of employment for the purpose of performing funeral honors duty as authorized by section 12503 of Title 10 or section 115 of title 32." 38 U.S.C. 4303(13) (emphasis supplied).

In other words, USERRA applies equally to all forms of uniformed service that fall within this very broad definition. The employer has the same obligations, regardless of whether the employee is away from work for five hours or five years. An airline pilot should not lose civilian pension credit for the 38-70 days per year that he or she misses work because of Reserve Component training duty.

Q: But the Reservist who misses a day of work to participate in military training receives one or two Reserve retirement points for that day, so it all comes out in the wash anyway.

A: Not necessarily. Many people participate in the National Guard or Reserve, and even get mobilized for emergencies, but then leave before accumulating 20 "good years" to qualify for an age-60 military pension. The pay, allowances and benefits to which a Guard or Reserve member is entitled should have no bearing on the calculation of retirement benefits that flow from a civilian career. What the member receives from the military by way of retirement benefits should be in addition to, not instead of, what he or she

receives upon retirement from a civilian career. If what the member receives from the military comes at the expense of what he or she would otherwise qualify for in the civilian career, there is no net incentive to participate in the Reserve Component and to make oneself available for mobilization. One of the purposes of USERRA is to encourage service in the uniformed services. [See 38 U.S.C. 4303(a)(1)]. I also invite your attention to Law Reviews 2, 13, 15, 21, 48, and 57. With regard to pension rights under USERRA, please see Law Reviews 4, 9, 40, 74, 75, 76, and 82. ROA

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