

LAW REVIEW 13139

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How Much Must I Pay To Obtain State Pension Credit for my Year of Active Duty?

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1.3.2.3—Pension credit for military service time

Q: I am a Lieutenant (O-3) in the Navy Reserve and a life member of ROA. I joined ROA in 2004, when I earned my commission after many years of enlisted service in the Navy and Navy Reserve.

I am a local police officer and have been since December 1988. Under our state law, a police officer with 25 years of service is eligible to retire with a pension that amounts to 65% of the police officer's final salary—for me that would be \$65,000 based on a salary of \$100,000.

The Navy called me to active duty for all of 2012—I entered active duty on January 1 and was released from active duty on December 31. I returned to the civilian job on January 2, 2013.

I have read with great interest your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA).¹ I made it a point to meet the USERRA eligibility criteria for this 2012 active duty period, based on having closely read your articles. I gave the police department plenty of advance notice, orally and in writing. I served honorably and was released from active duty without a disqualifying bad discharge from the Navy. After release, I applied for reemployment and returned to work almost immediately, well within the 90 days permitted me under USERRA.

While I am working, I contribute 10% of my salary (currently \$10,000) to the state pension plan, and the city contributes another 10%. When I returned to work in January 2013, I offered to make arrangements to pay the \$10,000 as a make-up for 2012, and I asked the city to kick in their \$10,000.

The city refused to pay anything, claiming that it is under no legal obligation to do so and cannot afford it. The state pension plan administrator told me that I am eligible for state

¹ We invite the reader's attention to www.servicemembers-lawcenter.org. You will find 961 articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function to facilitate finding articles about very specific topics. Captain Wright initiated this column in 1997, and we add new articles each week. We added 122 new articles in 2012 and another 139 so far in 2013.

pension plan credit for Calendar Year 2012 (and thus to retire on a 65% pension in December 2013), but only if I pay the entire \$20,000.

I don't mind paying the \$10,000 that I would have paid if I had been at work for the entire year of 2012, but I don't think that I should have to pay the city's \$10,000 bill. What do you think?

A: As I discussed in Law Review 13137, this is an example of a contributory defined benefit plan (DBP). You and your fellow police officers pay half the cost of funding the plan, but there are not individual accounts for each officer, and your monthly pension entitlement with 25 years of police service is determined by formula, not by the amount of money you and the employer have put into the account and the performance of the investments over the last quarter century.

Under section 4318 of USERRA, you are required to pay into the state pension fund, by way of make-up contributions, the amount that *you would have paid in if you had been continuously employed*. The city and the state pension plan have violated USERRA by trying to make you pay in the employer share.

“(2) A person reemployed 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 reemployment 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) (emphasis supplied).

This provision could hardly be clearer. The city is required to pay in the amount (\$10,000) that it would have paid in if you had been continuously employed by the city in 2012, instead of being on active duty, and you cannot be required to pay in more than you would have paid in (\$10,000). I hope that this can be worked out quickly so that you will be able to retire on schedule at the end of this year (2013). Good luck.