Knox McLaughlin Gornall & Sennett, P.C.
Erie • Pittsburgh • Jamestown, NY
814-459-2800 • www.kmgslaw.com

International Conflicts and Retirement Plans

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What do international conflicts have to do with retirement plans in the United States? At first glance, the answer is "nothing."

However, the correct answer depends on whether your workforce is called to military service while employed and then, after that call to service, resumes employment with you.

In 1994 the Uniformed Services Employment and Reemployment Rights Act (USERRA) became law. USERRA requires all employers to provide leaves of absence to all regular (i.e. not temporary) employees (whether full time or part time) for their active service, training and funeral honors with the uniformed services.

Among other rights and protections, USERRA specifically preserves an active duty employee's rights in pensions and other employee benefit plans. Prime examples will be members of the National Reserve and National Guard actively employed in civilian jobs.

USERRA allows "retroactive restoration" of retirement benefits, provided that:

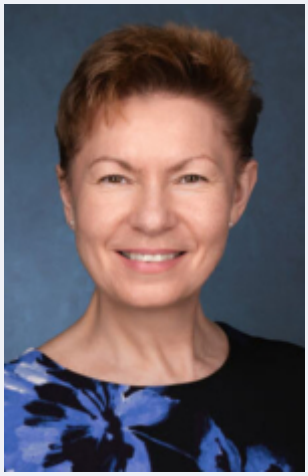
1. Employees satisfy USERRA prerequisites, (i.e. purpose for leaving the job, a prior notice from the employee, military service leave of absence did not exceed 5 years with one employer, upon military honorable discharge the employee timely returns to work), and
2. Employers are not exempt from reemploying such employees (in case of undue hardship, change of circumstances, or transitory nature of the prior employment with the employer).

Under USERRA, a returning employee can make up elective deferrals and after-tax contributions that the employee could have made if the employee had not been absent. Elective deferrals will include catch-up contributions and designated Roth contributions. Contributions are capped at the limits as applied to those elections for the year to which the deferrals or contributions relate. Compensation is defined, for purposes of calculating make-up elective deferrals and after-tax contributions, as the amount that the employee actually earned during the year of uniformed service plus the additional pay that the employee would have earned if the uniformed employee had remained employed with the employer.

Under USERRA, an employer is required to contribute make-up matching contributions and profit-sharing contributions in compliance with the plan terms. Matching contributions are calculated on make-up elective deferrals by applying the matching formula for the year to which the make-up elective deferrals, including after-tax contributions, relate. Similarly, the profit-sharing contributions are calculated using the profit-sharing formula for the year to which they relate and are also based on compensation as described above.

It is easy to overlook USERRA compliance. If an employee leaves the job for uniformed service in year 1, and timely returns to your employ upon discharge from that service in year 2, USERRA overrides a last day of employment requirement and provides service credits toward plan allocations. Upon the service member's return, determine the applicable profit sharing contribution and make that contribution as soon as the employee returns. Since the matching contribution is based on the employee's deferrals, as soon as the deferrals are made for the period of the employee's service absence, the employer should make the applicable matching contribution or contributions for the absence in year 1 and year 2.

If you have questions about USERRA compliance or other employee benefit matters, please contact Nadia Havard.



Nadia A. Havard

Nadia A. Havard concentrates her practice in all areas of qualified and nonqualified retirement plans and employee benefits; transfer taxes; fiduciary income tax and trust administration; business; as well as estate planning and administration. She also helps nonprofits obtain and maintain their tax-exempt status.

nhavard@kmgslaw.com • 814-459-2800

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