

# Employer Memo

Date August 13, 2009

To Employers of FPPA Members

RE **IMPORTANT NOTICE !  
Contributions for Members on Leave of Absence  
Including Military Leave**

There are two important issues which employers need to know regarding members on leave of absence:

- 1. A member continues to be covered by the Statewide Death & Disability Plan (up to a maximum of two years) as long as the required contribution continues to be paid during the periods the member is on an authorized leave of absence. Coverage shall terminate if contributions are not received by FPPA. The FPPA Board of Directors strongly encourages the employer to cover the member entirely during a period of military leave, but leaves this to local discretion.**
- 2. The employer may choose to continue to submit to FPPA the employer's normal contributions or allocations while the FPPA member is away on military leave. However, service credit will be awarded to the returning veteran only upon the repayment of employee contributions as required under the terms of USERRA.**

The following information is provided as a discussion of these issues.

## **BACKGROUND - USERRA**

As you know, many reservists continue to be summoned to active duty. Some of these reservists may be members of the Statewide Defined Benefit Plan, the Statewide Money Purchase Plan, and/or the Statewide Death and Disability Plan. Some questions have arisen concerning benefits for reservists during periods of military leave. This memorandum, specifically addresses the requirements of federal and state law as they affect pension benefits under the statewide plans administered by FPPA.

The reemployment rights of employees on military leave are governed by the Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA was passed in 1994 to clarify the rights and benefits of reservists returning from Operation Desert Storm in Iraq. Members

must comply with the requirements of USERRA in order to receive the benefits provided under this federal law. Generally, those benefits include reemployment without loss of seniority or pension benefits.

In order for employees on military leave to take advantage of the reemployment rights under USERRA, they must notify their employers, either orally or in writing, that they will be absent from work because of military duty. Also, for a veteran to be entitled to the benefits provided under USERRA, the military leave of absence cannot exceed five years and the employee must apply for reemployment within a reasonable period following an honorable discharge.

### **REEMPLOYMENT**

The length of a returning veteran's military service determines the time period for seeking reemployment following discharge. If the service is for 30 days or less, a veteran must apply for reemployment or report to his or her place of employment no later than the beginning of the first full work period on the first full calendar day following completion of service, plus eight hours to allow for safe transport home. If the military service lasts more than 30 days but less than 181 days, a returning veteran must seek reemployment no later than 14 days following the end of service. For military service periods of 181 days or more, reemployment must be sought no later than 90 days following discharge. In the event of an injury, a veteran generally has up to two years to apply for reemployment.

### **RETIREMENT BENEFITS**

USERRA provides that for the purpose of calculating pension benefits, compensation is to be determined as if the leave had not occurred. Also, USERRA requires an employer to fund any accruals to a defined benefit plan and allocations to a defined contribution plan for a returning employee as if he or she had never taken leave. However the accruals and allocations are conditioned on the employee making up any required contributions. Thus, an employer will have to make up any unpaid contributions for the returning employee, provided the employee makes up the missed deferrals or contributions. The employee must make up the contributions within a period not exceeding three times the period of military service, but in no case may the period exceed five years.

**The employer may choose to continue to submit to FPPA the employer's normal contributions or allocations while the FPPA member is away on military leave. However, service credit will be awarded to the returning veteran only upon the repayment of employee contributions as required under the terms of USERRA.**

If the employee does not return to work for the employer after military service or otherwise fails to comply with the reporting and repayment provisions of USERRA, the employer will receive a credit from FPPA for the contributions made on behalf of the veteran.

FPPA asks that employers furnish to FPPA the names of those persons on military leave for whom employer contributions are being submitted, and the amount of those contributions. FPPA will then be able to make note of the purpose of those contributions. Also, please notify FPPA immediately upon the employee's return to work so his or her status is kept current in FPPA's records and so he or she can be given the opportunity to make up any unpaid contributions.

**DEATH AND DISABILITY PLAN**

As you know, in addition to the normal retirement plan offered through FPPA, FPPA provides disability and survivor pension benefits for its members and their families. Those benefits for members hired prior to January 1, 1997 have been funded entirely by the State of Colorado and not by employer or employee contributions. Benefits for those hired on or after January 1, 1997 are funded through employer and/or member contributions. Benefits are available to active members of the Statewide Death and Disability Plan as well as members who are on an authorized leave of absence from their jobs, including an authorized leave of absence for military duty. FPPA Rule 401 requires official certification of leaves of absence in which the employee is off the employer's payroll for one month or more.

**A member continues to be covered by the Statewide Death & Disability Plan (up to a maximum of two years) as long as the required contribution continues to be paid during the period the member is on an authorized leave of absence. Coverage shall terminate if the monthly contribution is not received by FPPA.**

If the employer is paying 100% of this contribution, please continue to remit the D&D contribution on a monthly basis using the member's latest base salary. If the employer contributes partially or the member pays the entire contribution, the employer will remit the monthly contribution during the authorized leave of absence using the member's latest base salary. The FPPA Board of Directors strongly encourages the employer to cover the member entirely during a period of military leave, but leaves this to local discretion. Within your contribution reporting process, please notify FPPA which members are on military leave. Attached is the policy approved by the FPPA Board of Directors at its October 31, 2001 meeting that provides administrative details on this issue.

**Thank you for your cooperation in handling these situations involving military leave. If you have any questions about any of the items discussed in this memo, please contact FPPA's Membership Accounting Supervisor, Charles Duran, at (303) 770-3772 in the Denver Metro area or toll free statewide at (800) 332-3772. Members and employers who have Internet access and wish to learn more about USERRA can visit <http://www.dol.gov/elaws/userra0.htm>.**

The Board of Directors of the Fire and Police Pension Association adopted the following policy on October 31, 2001, effective upon adoption:

**Authorized Leave of Absence Policy**  
**Military Service Policy**  
**Statewide Death and Disability Plan**

A member on an authorized leave of absence continues to be covered under the death and disability plan upon payment of required contributions of the members base salary at the time the leave commences. Employers are responsible for submitting the contribution on a monthly basis. An authorized leave of absence shall not exceed two years.

With regard to the Statewide Death and Disability Plan, a member on military leave is entitled to the same benefits that a person on an authorized leave of absence is entitled to receive. Any benefits payable under the Statewide Death and Disability Plan shall be offset by any death or disability benefits received from the military.