Military Service Credit

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Issue

The issue before the Executive Committee is whether to recommend changes to existing plan provisions governing military service credit.

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Members Impacted

All members of Washington's retirement systems may avail themselves of some form of military service credit. "Interruptive" military service credit is available to those who interrupt public employment to serve in the uniformed military branches of the United States. This type of service is governed by the federal Uniformed Services Employment and Re-employment Rights Act (USERRA)[1]. The act is described in more detail under the heading "Current Situation."

In addition, two of Washington's closed plans, PERS 1 and WSP 1, allow members with 25 years of service credit to receive up to five service credit years for "prior" military service (military service which took place prior to retirement system membership). This service credit is available at no additional cost to members. Prior military service credit is not available to members of LEOFF 1 or TRS 1, nor is it available to any members of the Plans 2 or 3.

Incidence of Prior Military Service			
	Percent with Military Service	**Average Military Service Months**	**Overall Average Additional Service Years**
PERS 1*			
Males	48%	37	1.48
Females	1%	35	0.03
WSP**	43%	32	1.15

Members with 25 years of service may receive up to 5 years of military service credit
*Members of PERS Plan 1 may use certain prior military service as well as interruptive military service
** Members of WSP Plan 1 may use all prior military service as well as interruptive military service
Members of WSP Plan 2 (those commissioned on or after January 1, 2003) may use only interruptive military service

The above table summarizes the incidence of prior military service in PERS 1 and in the WSP Plans. The table below compares the percentages of male and female members in PERS 1 and the WSP.

Plan Membership by Gender*					
	Total	**Male**		**Female**	
PERS 1	21,737	9,586	(44%)	12,151	(56%)
WSP	1,035	959	(93%)	76	(7%)

At September 30, 2002

Current Situation

Interruptive Military Service: Interruptive military service is governed by federal law. At a minimum, public employers must provide the protections specified in the Uniformed Services Employment and Re-employment Rights Act (USERRA). USERRA was signed into law in 1994, with amendments made in 1996, 1998 and 2000. This law provides for the re-employment of individuals who leave employment to serve in the uniformed military branches. Included in USERRA's re-employment rights is the right to restoration of retirement plan benefits.

For employers, the fundamental requirement of USERRA as it relates to retirement plan benefits is to fund the benefits that a re-employed participant did not receive due to qualifying military service. The employee must be treated for vesting and benefit accrual purposes as if he or she had remained continuously employed. Employers do not have to begin making up pension contributions until after the veteran returns to civilian employment with the same employer. Employers may fund makeup contributions over a period of three times the military service period, not to exceed five years. A rehired veteran is not entitled to missed allocations for any lost earnings on makeup contributions.

Generally, under USERRA, rehired veterans have up to three times the period of service - not to exceed five years - to make up missed employee contributions. The amount of makeup contributions is subject to the limits that would have applied during the military service period. No interest is charged on the contributions, because rehired veterans can only be charged the amount they would have been permitted or required to contribute had they remained continuously employed throughout the period of military service. The Washington State Retirement Systems allow a five-year payback period for employee contributions, regardless of the period of military service. An exception to the USERRA payback requirements exists for members of PERS 1 who apply for reinstatement of employment, are refused for reasons beyond their control, and who resume public service within ten years. Such members shall have the military service credited to them at no cost upon resumption of public service as provided in RCW 41.40.170.

Prior Military Service: As stated above, there is an inconsistency with respect to retirement plan members' ability to receive service credit for prior military service. This benefit is only available to members of WSP 1 and PERS 1. All other plan members are only allowed service credit for interruptive military service.

Members of PERS 1 and WSP 1 must have 25 service credit years to be eligible to receive credit for military service prior to retirement plan membership. Total interruptive and prior military service credit cannot exceed five years, and in both plans the members must restore all withdrawn accumulated contributions in order to receive credit for the prior service. No member payments are required for prior military service credit.

History

Military service credit was reviewed by the Joint Committee on Pension Policy (JCPP) in 1988 and by the Executive Committee of the JCPP in 1997. In 1988 military service credit was evaluated as part of a comprehensive analysis of the provisions for granting service credit. Upon completion of its study, the JCPP concluded that the state's policy was not to grant additional service credit for prior military service. In 1997, the JCPP Executive Committee heard an update on military service credit but the issue was not heard by the full committee.

Since 1996, two JCPP bills on military service credit passed in the legislature, and both were to conform Washington law to federal law (USERRA). At least twenty more bills were filed to expand opportunities to acquire military service credit, but none passed.

Due to the war in Iraq there has been a renewed interest in the effects of military service on employee benefits. During the 2004 legislative session, the OSA tracked five non-SCPP bills concerning military service, none of which passed. Two of these bills, HB 2415 and SSB 6071 would have expanded the definition of "veteran" for various purposes. HB 2415 would have expanded the definition of veteran to include a U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the Department of Defense or its agents during the Korean and Vietnam wars. SSB 6071 would have exempted veterans of the Afghanistan conflict and Persian Gulf War II from certain increases in tuition and fees for higher education. Another bill, 2SSB 6578, would have provided up to two years of military leave during which employees of the state would receive one-half of the difference between their normal pay and their combined military pay and allowances.

The remaining two bills, SB 6743 and SB 6492, would have allowed members of TRS 1 with 25 service credit years to receive up to five years of service credit for prior military service. The two bills differed in the amount of contributions members would be required to pay to receive the service credit: SB 6492 required a contribution "as determined by the Director of the Retirement Systems;" and SB 6743 required "six percent of the average earnable compensation for the two highest compensated consecutive years of service for each year of prior military service credited." Currently, no payments are required from members of PERS 1 and WSP 1 who receive credit for prior military service.

Examples

A. ***Prior Military Service***: The following example illustrates how the ability to receive up to five years of prior military service credit can enhance the retirement benefit of a PERS 1 member. A PERS 1 member retiring with 25 years of service credit and an average final compensation (AFC) of $45,000/year would receive a monthly retirement allowance of $1,875 (before reductions for optional forms of payment).

$$\frac{2\% \text{ x } 25 \text{ years x } \$45{,}000}{12 \text{ months}} = \$1{,}875$$

If that same member also had five years of military service before becoming a state employee, his or her monthly retirement allowance would increase to $2,250 based on 30 years of service credit instead of 25.

$$\frac{2\% \text{ x } 30 \text{ years x } \$45{,}000}{12 \text{ months}} = \$\ 2{,}250$$

B. ***Interruptive Military Service***: The following hypothetical example illustrates how a member who is called into active duty may obtain service credit for interruptive military service. Consider a member of the Washington State Patrol Retirement System (WSPRS) who was hired July 1, 1999 and was called into active service from July 1, 2003 through June 30, 2004 after completing four years of service with WSPRS. This member's salary was $40,000 when he left employment and he was required to make an employee contribution of 2% of salary during the period of active service. There was no required employer contribution. Assuming that the member is re-employed upon his return from active duty (according to the terms and conditions set forth in USERRA), the member has five years (more generous than USERRA's three years) to pay back the contributions he would have paid had he remained continuously employed. Therefore his total payment obligation is:

$$2\% \text{ x } \$40{,}000 \text{ x } 1 \text{ year} = \$800$$

Assuming repayment, the member is treated as if he had been continuously employed and his service credit had continued to accrue while away on active duty. The member's vesting date (based on a five-year vesting period for this plan) will be July 1, 2004. *Note:* the member's payback will vary from plan to plan, as member contribution

rates differ throughout the Washington State Retirement Systems. See the 2004 SCPP Orientation Manual for more information on contribution rates.

Policy Analysis

Prior Service: As noted above, the JCPP concluded in 1988, upon completion of its study of service credit, that the state's policy was not to grant additional (prior) service credit for military service.

Policies that *support* granting prior military service credit in other Washington plans include the following:

- Recognition of Service: Granting military service credit that is either partially or wholly funded by the state would recognize the service rendered by individuals to our country.

- Service in the military might have delayed the beginning of a member's career with the state and deprived the member of the opportunity to earn a better retirement benefit.

- Parity: Prior military service is provided only to the PERS and WSP Plans 1. There has been pressure from members of other systems for similar benefits. RCW 41.50.005(1) sets forth as retirement policy that the retirement systems of the state shall provide similar benefits whenever possible.

The following policies would *oppose* granting prior military service credit in the other plans:

- Cost: Granting additional military service credit to plan members without requiring payment of the full actuarial cost results in additional liabilities. For plans like TRS 1 that are not fully funded, this means additional unfunded liability and a lower funding ratio.

- Granting additional military service credit at little or no cost would provide a benefit for periods when no service was rendered within the plan.

- The last military draft ended in 1973. Since military service is now voluntary, the interruption of a public employee's career to enter the uniformed services prior to entering public employment is voluntary, which can be seen as reducing the need for taxpayers to pay for retirement benefits during such periods.

While a future change in federal policy is always a possibility, there are no official plans in Washington for reinstating the military draft at this time. Congress would have to authorize it, and has shown no interest in taking such a step. Defense Secretary Donald Rumsfeld indicated in March, 2004 that he would not ask Congress to authorize a draft. However, the Selective Service System, the independent federal agency that would organize any conscription, has a special system to register and draft health care personnel ages 20 to 44 if necessary in a crisis. The agency is planning to expand this system to be able to rapidly register and draft computer specialists and linguists, should the need ever arise. Seattle Post-Intelligencer, "Agency Initiates Steps for Selective Draft," March 13, 2004.[2]

Interruptive Service: With respect to interruptive service, state retirement policy is constrained by the requirements of USERRA. All public employers must meet the minimum requirements of this federal law. However, states have the discretion to go beyond USERRA and grant benefits for the period of interruptive service that are more generous than those available under the act. The goal of USERRA is to treat employees who are called to active duty as if they had been continuously employed. Employers who choose to go beyond USERRA may reward active duty by paying all or part of the contributions that the member would have paid during the period of active duty. They may also provide all or part of the member's salary during the period of active service.

Comparison with other Retirement Systems: The following is a comparison of military service credit provisions in Washington's comparative retirement systems:

Retirement System	Prior Service	Interruptive Service
1. **Washington State**[3]	Prior with 5-year cap in PERS 1 and WSP 1 only at no cost to member; not available in other plans	Interruptive as provided in USERRA*
2. **City of Seattle**[4]	Prior with 5-year cap at actuarial cost	Interruptive as provided in USERRA
3. **Oregon (PERS and PSRP)**[5]	None	Interruptive as provided in USERRA
4. **Public Employee Retirement System of Idaho (PERSI)**[6]	None	Interruptive as provided in USERRA, but at no cost to member unless employer pays *full* salary while on active duty
5. **CalPERS**[7]	Prior with 4-year cap, or Peace Corps and AmeriCorps VISTA with 3-year cap, at actuarial cost	Interruptive as provided in USERRA, but at no cost to member if re-employed within 6 months of discharge
6. **CalSTERS**[8]	None	Interruptive as provided in USERRA
7. **Colorado PERA**[9]	None	Interruptive as provided in USERRA, but at no cost to member unless employer pays salary while on active duty
8. **Florida Retirement System (FRS)**[10]	Depending on hire date, prior with 4-year cap is available at statutory cost (% of salary + interest)	Interruptive as provided in USERRA
9. **Iowa (IPERS)**[11]	Prior at actuarial cost	Interruptive as provided in USERRA
10. **Minnesota (SRS and TRA)**[12]	Prior at actuarial cost	Interruptive as provided in USERRA
11. **Missouri (MOSERS)**[13]	Prior with 4-year cap at statutory cost (in an amount equal to the state contribution) plus interest	Interruptive as provided in USERRA
12. **Ohio (OPERS)**[14]	Prior with 5-year cap (+an additional 5 years if a POW) at percentage of salary as set by Board (cost cannot be less than 50% of actuarial cost)	Interruptive as provided in USERRA

**An exception exists for members of PERS 1, who may receive interruptive military service credit at no cost pursuant to RCW 41.40.170.*

The provisions for interruptive military service credit are relatively consistent due to the requirements of USERRA. A few states have gone beyond USERRA and provided interruptive service at little or no cost. With respect to prior service, there is a wide range of approaches. Some states do not allow service credit for prior military service. Others allow it, but impose limits on the amount of prior service. The cost to members ranges from $0 to full actuarial cost.

Some employers in some states may pay all or part of a members salary when the member is called for an extended period of active military service. In Idaho, members who are receiving *full* salary during active service must continue their employee contributions in order to continue to receive service credit. The ability to continue to accrue service credit during the period of interruptive service may increase benefits to a survivor in the event that the member dies while on active duty. It may also increase the benefit of a member who is unable to return to employment due to a service-related disability.

Some Washington public employers are voluntarily providing pay differential to retirement system members on military leave. Currently, such income cannot be reported to the DRS as "earnable compensation." Thus members on military leave cannot continue to accrue service credit while on active duty. Instead, they must wait until re-employment and pay back the member contributions they would have made had they been continuously employed. The LEOFF 2 Board is currently exploring an option for legislation to make military pay differential reportable as "earnable compensation."

The U.S. Congress is also currently paying some attention to employee benefits for those who are called into active military service. On April 21, 2004 the House of Representatives passed HR 1779, which would allow penalty-free withdrawals from qualified retirement plans for those called into active duty for at least 179 days (approximately six months). The contributions may be repaid, but there is no requirement that they must be repaid. As of August 25, 2004, this bill was still in the Senate Finance Committee.[15]

There are a number of state and federal benefits available to veterans and their survivors. State veteran benefits and programs are summarized on Washington's Department of Veterans Affairs website, www.dva.wa.gov. This website also provides links to the US Department of Veterans Affairs website, www.va.gov, which summarizes federal benefits. Most of the benefits described on these websites do not address rights and benefits under the Washington State Retirement Systems.

Limitations of USERRA and Possible Remedies

While USERRA provides for the restoration of retirement benefits upon re-employment of a member whose public employment was interrupted by military service, it does not address the retirement benefits that would have accrued to members who die while in active service or those who are unable to be re-employed due to a disability. Thus, for example, if a PERS 2 member would have reached ten years of service during the period of interruptive military service and dies in action, but had only nine years of service credit prior to leaving for active duty, the surviving spouse would be limited to a refund (based on nine years of service credit) and would not be able to receive a survivor benefit in the nature of a pension payment (based on ten years of service credit). This could be remedied by allowing the surviving spouse to pay the contributions that the member would have paid but for the military service, and allowing the service credit to accrue to the date of death.

Similarly, if the same member whose public employment was interrupted by military service becomes totally incapacitated for continued employment, that member's disability allowance would based upon service credit up to the date he/she left employment for military service instead of to the date of disability. Allowing the disabled member to pay the member contributions and restore service credit up to the date of disability would be consistent with the federal policy of treating the veteran for vesting and benefit accrual purposes as if he/she had been continuously employed.

Both of the above-described "remedies" are being explored by the LEOFF 2 Board as possible legislative options for 2005.

Conclusion

There are two types of military service for which service credit is available: prior and interruptive. With respect to prior service, up to five years of service credit is available to members of two plans only: PERS 1 and WSP 1. Most aspects of interruptive service are handled the same in all Washington retirement plans, as all plans must meet the minimum requirements of USERRA. Members covered by USERRA may have their service credit reinstated for the periods of interruptive service upon re-employment and repayment of their member contributions.

Members who are unable to take advantage of USERRA because they die or become disabled while in service could be given similar treatment to those who are re-employed by allowing such members or their survivors to reinstate service credit to the date of death or disability by paying back the applicable member contributions.

Endnotes

1. For complete information about USERRA, see the USERRA Advisor, http://www.dol.gov/elaws/userra.htm.

2. For the complete text of this article, see http://seattlepi.nwsource.com/national/164693_draft13.html.

3. For more information about military service credit in Washington see http://www.drs.wa.gov, the Department of Retirement Systems' website.

4. The provisions of the Seattle Municipal Code that govern the City Employees' Retirement System are found in Chapter 4.36 at http://clerk.ci.seattle.wa.us. See Section 4.36.124.

5. See links to these plans and the administrative code that governs them at http://www.pers.state.or.us.

6. For more information, see "Military Service and your PERSI Benefits" on the Idaho PERSI website, www.persi.state.id.us.

7. See the CalPERS website, www.calPERS.ca.gov.

8. Sources include the CalSTERS website, www.calSTERS.com and Lexis-Nexis, California Code Sections 22850 et seq.

9. See www.copera.org, "How Military Leave Affects Colorado PERA Members."

10. See Section 121.111 of the Florida statutes, http://www.flsenate.gov/statutes.

11. See www.ipers.org, "Buying Service - Veteran's Credit Buy-In."

12. See Sections 352.27, 352.275, 356.55, 354.53 and 354.33, Minnesota Statutes, www.revisor.leg.state.mn.us.

13. See http://www.moga.state.mo.us/statutes/chapters/chap104.htm for statutes governing military service credit in the Missouri State Employees'

Retirement System, Chapter 104.

14. See www.opers.org/aboutOPERS/membership/servicecredit.shtml and Sections 145.301 and 145.302, Ohio Revised Code, http://onlinedocs.andersonpublishing.com.

15. To track the status of HR 1779, visit http://thomas.loc.gov. This Act is cited as the "Guardsmen and Reservists Financial Relief Act of 2004."