

# Understanding Retirement & Insurance (R&I) Benefits Under USERRA

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ALPA VETERAN'S AFFAIRS SEMINAR

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# USERRA Pension Basics

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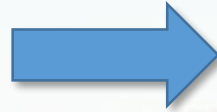
- » Basic concept: pilot not to be penalized for military service
- » Military service treated as continuous and uninterrupted period of service for purposes of:
  - Participation
  - Vesting
  - Benefit accrual
- » Not treated as break in service



# Transition Period

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- » 90-day period between end of service and return to work is also continuous and uninterrupted period of service



# Special Transition Period if Sick or Injured

- » If pilot is sick or injured during military service:
  - Treated as continuous and uninterrupted period of service for up to 2 years
  - Must report back to work upon recovery



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# What plans are covered?

- » Any plan that provides retirement benefits except for the federal Thrift Savings Plan
  - Defined benefit plans
  - Defined contribution plans
  - Profit sharing plans
  - Nonqualified deferred compensation plans



# Defined Benefit Plans

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- » Accrued benefit increased upon reemployment
- » Benefit is the same as if remained continuously employed
- » Employer must pay any contributions
- » If took a distribution, can repay plan with interest once reemployed



# Employer Contributions

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- » No obligation for employer to contribute during period of service
- » Contributions must be made upon reemployment
  - Matching contributions paid as provided by the plan, as long as employee contributions are made
  - Other contributions generally paid on later of (i) 90 days after return or (ii) when employer normally contributes for the year
- » Paid in same manner and to same extent as for other pilots during period of service



# Employee Elective Deferrals

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- » Pilot can make up missed deferrals upon reemployment
  - Have 3x the length of service to make up payments, up to a maximum of 5 years
  - No obligation to make all missed elective deferrals
- » Employer matching contributions for period of service may be conditioned on making elective deferrals





# IRS Limits

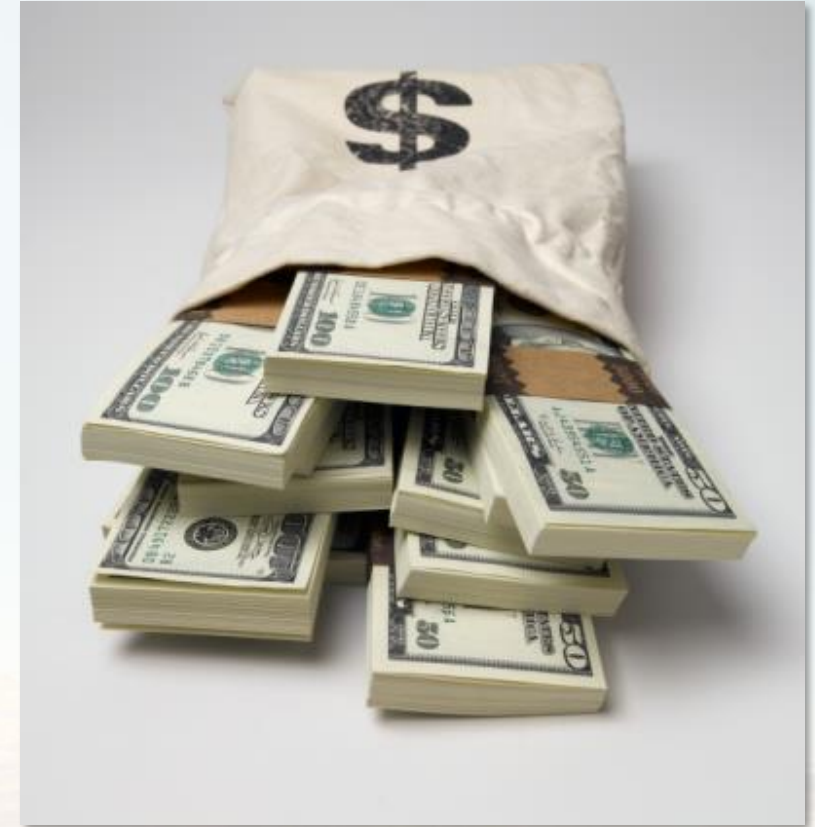
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- » Code Sections 402(g) and 415(c)
  - Apply to making up missed elective deferrals
- » Pilot designates which year(s) payments are for
  - Allows for some control



# Calculation of Compensation

- » Use rate of pay pilot would have received but for period of service (escalator rule)
- » Rate of pay is “reasonably certain” if high probability pilot would be paid at certain rate but for period of service
- » If not reasonably certain, use average rate during 12-month period prior to service



# Calculation of Compensation (cont.)

- » Issue is especially fact intensive for pilots
- » Potential seat and equipment changes
- » Some CBAs address this issue
- » FedEx settlement—process for imputing status change after return from service



# Repayment of Plan Loans

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- » Loan repayments may be suspended during service, but suspension is not required
- » If suspended, must resume payment when service ends
- » Must repay by end of maximum repayment period, plus service period
- » Interest capped at 6%



# What health plan coverage must employer provide?

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- » COBRA-like continuation of health coverage
  - Up to 24 months
- » No requirement to allow employee to initiate new health coverage



# How much must the employee pay to continue health plan coverage?

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- » MLOA less than 31 days
  - Same as active employees
- » MLOA is 31 days or more
  - No more than 102% of the cost



# How does employee elect and pay to continue health plan coverage?

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- » USERRA does not specify rules
- » Plan may establish reasonable rules
  - Must be consistent with USERRA's exceptions to the requirement that employee give advance notice of military service
  - Example: An employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for the employee to make a timely election



# What if employee does not timely elect to continue coverage?

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- » Coverage may be canceled upon employee's departure
- » No notice of service and no election:
  - If failure to give notice is excused under USERRA—i.e., impossible, unreasonable, or precluded by military necessity—coverage must be reinstated upon employee's election and payment of all amounts due





# What if employee does not timely elect to continue coverage? (cont.)

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## » Notice of service but no election:

- Coverage must be reinstated retroactively
  - If plan has reasonable rules: when the employee makes an election within the time period specified by the plan
  - If plan has not developed reasonable rules: when the employee makes an election at any time during the 24-month maximum continuation period



# What if employee elects but does not timely pay for continuing coverage?

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- » Plan administrator may adopt reasonable rules allowing cancellation of coverage if timely payment is not made
- » COBRA-compliant rules may be reasonable as long as they don't conflict with USERRA



# Other Benefits

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- » All non-seniority benefits provided to similarly-situated employees on furlough or leaves of absence
- » If benefits vary according to type of leave, most favorable treatment accorded to any comparable form of leave



# Questions?



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