

Publications

Military Relief Under the HEART Act: Year-End Plan Amendments Needed

PUBLISHED

05/01/2010

SERVICES

President Bush signed the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) on June 17, 2008. The Act, in part, provides certain tax benefits and pension and welfare incentives to military personnel. This law was the first since the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to provide comprehensive relief for military personnel. USERRA provides that employees who leave a civilian job for qualified military service are entitled to reemployed with the same employer, provides certain eligibility provision are satisfied and also provides for entitlement to certain pension, profit-sharing and similar benefits that would have been received but for the employee's absence during military service. For example, an employee reemployed under USERRA is treated as not having a break in service because of the military service; the employee's military service is treated as service for vesting and benefit accrual purposes; the employee is permitted to make make-up contributions (either 401(k) contributions or after-tax contributions) upon return for the missed period; and the employee is entitled to receive related accrued benefits that are contingent on such contributions (e.g., matching contributions).

Under the HEART Act, additional relief provisions are provided for military personnel, and Notice 2010-15 provides much-needed guidance on the proper interpretations of the key pension provisions, in question-and-answer format. Importantly, it clarified that plan amendments are needed by the end of the 2010 Plan Year (2012 Plan Year for governmental plans), but no sample amendments are included in the guidance. The pension relief and the related clarifications are summarized in the attached article.