

## **Uniformed Services Employment and Reemployment Rights Act (USERRA)**

### **Important: Read instructions before you complete and submit enclosed forms.**

This packet includes the PERS Chapter 238 Program (PERS) and the Oregon Public Service Retirement Plan (OPSRP) USERRA Certification form with complete instructions. It also includes the Rights Under USERRA Information Sheet, which outlines the federal reemployment rights under USERRA. To make catch-up contributions to the Oregon Savings Growth Plan (OSGP), contact OSGP at 503-378-3730.

### **Things to consider**

To qualify for reemployment under USERRA, the employee must meet all of the following eligibility criteria:

1. The employee must have left a PERS or OPSRP qualifying position.
2. The employee must have given notice that he or she was leaving to perform military service.
3. The employee's cumulative period of service must not have exceeded five years (there are exceptions).
4. The employee must have been released from service under honorable or general conditions.
5. The employee must have reported back to work or applied for reemployment with the same employer (the state is considered one employer) within time constraints prescribed by law.

To obtain retroactive PERS or OPSRP benefits under USERRA, the employee must:

- have qualified for reemployment under the provisions of USERRA,
- be certified as qualifying for reemployment by his or her employer under the provisions of USERRA, and
- have his or her employer submit military time and salary information to PERS.

### **Determining USERRA benefit eligibility**

USERRA is a reemployment law. Once a member qualifies for reemployment, the member is entitled to the applicable retirement benefits provided under Oregon Administrative Rules 459-011-0100 (PERS), 459-011-0110 (PERS), 459-075-0100 (OPSRP), and 459-080-0100 (OPSRP).

### **Complying with USERRA is a federal requirement**

Employers must submit the USERRA Certification Form (enclosed). Employees should review the completed form with his or her employer for accuracy prior to its submission to PERS. When PERS receives the form, we will determine the amount of employer contributions required by the employer. We will also determine the amount of member contributions due and send a statement to the employee or employer, depending on who is responsible for the make-up contributions.

### **General instructions to employers**

**Note:** There may be time constraints under USERRA. Filing the USERRA Certification form in a timely manner may be crucial to meet the time constraints.

- Type or print legibly in dark ink. Illegible forms may be returned for correction, which could delay this request.
- Read the specific instructions for filling out the form. Instructions begin on page 2.
- Sign and date the form.
- Employers may deliver or mail the PERS USERRA Certification form to PERS. You may send the USERRA Certification form to: PERS - Attn: MERS – Military, PO Box 23700, Tigard, OR 97281-3700. Do not include payment with these documents.
- Employers may also fax this form to PERS at 503-603-7626 or e-mail it to [mers2@state.or.us](mailto:mers2@state.or.us).

## **Instructions for USERRA Certification form**

**Employers must fill out the USERRA Certification form. PERS cannot begin the process until we have received and accepted this form.**

The first step an employer must take is to determine whether the returning employee is entitled to reemployment under USERRA. **Determining the right to reemployment is the employer's responsibility.** To qualify for "make-up" retirement benefits, the employee must first qualify for reemployment under the eligibility requirements set forth in USERRA. It is not sufficient that an employer simply "hold" an employee's position while the employee is away on military leave or gives a non-qualifying employee a position upon returning. The requirements for reemployment are contained in the Rights Under USERRA Information Sheet, which can be found on the PERS employer website at [www.oregon.gov/pers](http://www.oregon.gov/pers).

### **Section A: Employee information**

Fill in the member information block completely. Include the member's address and phone number. **Providing the member's Social Security number (SSN) is voluntary. It will be used for confirmation purposes. Failure to supply the SSN may delay processing.**

### **Section B: Employer certification**

Employers must certify the employee has met all of the qualifications for reemployment under USERRA. The certification should be in the form of a statement from the head of the employer's personnel department stating that USERRA eligibility requirements have been reviewed and the employee satisfies those requirements.

Complete Section B, and sign and date the certification.

### **Section C: Qualifying time period**

USERRA provides that the entire period of absence necessitated by service in the uniformed services is to be considered service with the employer upon reemployment. The period of absence may include time after the last day worked but prior to the employee reporting for military service (preparation time). The period of absence will include the time after military service during which the employee is entitled to seek reemployment under USERRA (decompression time). It is the employer's responsibility to determine and certify the period that qualifies under USERRA. For more information on the qualifying time period, refer to the U.S. Dept. of Labor website at [www.dol.gov/vets/programs/userra](http://www.dol.gov/vets/programs/userra).

Enter the last date of employment or paid leave prior to USERRA-qualifying time. Enter the beginning and end dates of the period you, the employer, have certified as qualified under USERRA. Enter the date of the first day of employment or paid leave following the USERRA-qualifying time.

Example: Employee submitted required notice and left employment on March 1, 2002. Employee reported for military service on April 1, 2002 and was discharged on July 5, 2004. Employee returned to employment on August 18, 2004. Employer determines that the USERRA-qualifying time includes a preparation time period from March 15 to March 31, 2002, military service from April 1, 2002 to July 5, 2004, and decompression time from July 6 to August 17, 2004. The employer reports the USERRA-qualifying time period as March 15, 2002 to August 17, 2004.

### **Section D: Salary that would have been earned during each month of USERRA qualifying time**

USERRA states the amount of salary an employee would have earned includes the salary the employee was making at the time of his or her departure plus any cost-of-living increases, raises, etc., the employee would have received if he/she had not left for military service. This would include any increases that would have been awarded due to longevity of employment or seniority of position.

The amount of salary would also include the average overtime the employee would have worked and earned. For guidance and/or answers to questions about calculating salary for this purpose, refer to the U.S. Department of Labor's website at [www.dol.gov/vets/#userra](http://www.dol.gov/vets/#userra).

## Instructions for USERRA Certification form (continued)

Enter the amount of salary the employee would have earned for each month the employee qualified under USERRA.

Example:

Year	January	February	March	April	May	June	July	August	September	October	November	December
			\$1,539.65	\$3,079.30	\$3,079.30							

**Note:** If the amount of salary cannot be reasonably determined, the salary shall be the employee's average rate of pay calculated for a period not exceeding the 12 months immediately preceding the period of qualifying military service.

### Section E: Contributions

Check box 1 if the employer would have paid the employee's member contributions (EPPT) to the employee's PERS regular account or Individual Account Program (IAP) account while the employee was serving military duty.

If the member contributions were EPPT, the employer must submit the "make-up" contributions. These contributions will equal the amount the employer would have contributed on the employee's behalf had the employee not left for military service.

The employer is not responsible for any earnings the contributions may have accrued while the employee was performing military service.

Once the employer reports the amount of salary to PERS, we will calculate the amount of the EPPT contributions due and invoice the employer.

PERS will also invoice the employer for any corresponding employer contributions.

The employer has 30 days to submit the contributions in a lump sum to PERS. Once the contributions are received, PERS will update the employee's account and reflect the corresponding creditable service.

**Check box 2 if the employer would have paid the employee's member contributions, either pre-tax or after-tax (MPPT) or (MPAT), to his/her PERS regular account or Individual Account Program account while serving military duty.**

If the contributions were MPPT or MPAT, the employee may make-up any or all of the employee contributions that would have been made had he/she never left for qualifying military service.

The contributions may be made in installments. Upon reemployment, the employee has up to three times the length of service to submit the "make-up" contributions, not to exceed five years.

Example: If the employee was gone for one year of qualifying military service, the employee will have three years upon reemployment to repay some or all of the contributions. If an employee was gone for four years, the employee has only five years in which to make-up the contributions.

The employee is not required to make up any of the contributions. Except for members of the OPSRP Pension Program, members will only receive corresponding service credit for the amount of make-up contributions they submit.

To make a lump-sum payment or to set up an installment plan, the employee should refer to the instructions in the letter PERS will send the employee after we receive this form.

PERS will also invoice the employer for any corresponding employer contributions.

### OPSRP Pension Plan members

OPSRP Pension Plan employees who qualify for reemployment are entitled to service credit to OPSRP Pension Plans for their qualifying military service without making member contributions. Employers, however, will be responsible for submitting the employer contributions into the pension fund.



## USERRA Certification

This form is for both the PERS Chapter 238 program (Tier One/Tier Two) and the Oregon Public Service Retirement Plan (OPSRP). Call or visit our website if this is not the form you need.

**Section A: Employee information** (Type or print clearly in ink. Illegible forms may be returned to member. This could delay your request.)

Member first name	MI	Last name	Social Security number*								
			<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> </tr> </table>								
Member mailing address (street or PO box)			PERS number								
City	State	Zip	Country								
			Member phone number								

**Section B: Employer certification**

I hereby certify that the employee listed above has met all of the qualifications for reemployment under the Uniformed Services Employment and Reemployment Rights Act (USERRA) 38U.S.C.4301-4333.

Employer number	Employer name		
Certifying person's name	Title		
Signature	Phone	Ext.	Date

**Section C: Qualifying time period**

Last date of employment or paid leave prior to USERRA-qualifying time: \_\_\_\_\_ , \_\_\_\_\_ , \_\_\_\_\_ .  
 (month) (day) (year)

Time period that qualifies under USERRA: from \_\_\_\_\_ , \_\_\_\_\_ , \_\_\_\_\_ to \_\_\_\_\_ , \_\_\_\_\_ , \_\_\_\_\_ .  
 (month) (day) (year) (month) (day) (year)

First date of employment or paid leave following USERRA-qualifying time: \_\_\_\_\_ , \_\_\_\_\_ , \_\_\_\_\_ .  
 (month) (day) (year)

**Section D: Salary that would have been earned during each month of USERRA qualifying time**

Year	Jan.	Feb.	March	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.

**Section E: Contributions (Check only one box.)**

1.  Member contributions were “picked up” by the employer (EPPT).
2.  Member contributions were paid by the member either pre-tax or after-tax (MPPT or MPAT).

Office use only	
<input checked="" type="checkbox"/> PERS	<input checked="" type="checkbox"/> OPSRP <input type="checkbox"/> IAP
<input type="checkbox"/> Member	<input type="checkbox"/> Alternate payee
<input type="checkbox"/> Cross reference member SSN	

\*Providing your Social Security number (SSN) is voluntary. It will be used for confirmation purposes. If you choose not to supply your SSN, it may take PERS staff longer to process your form.

In compliance with the Americans with Disabilities Act, PERS will provide help filling out this form upon request. You may request help by calling 503-598-7377, toll-free 888-320-7377, or TTY 503-603-7766.