

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 050 – DEFERRED COMPENSATION

459-050-0072

Military Leave Catch-up

The purpose of this rule is to establish the criteria and procedures to comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA) as codified in 38 USC 4301-433, and with 23 USC 414(u) and 457 for an eligible employee who has been absent from employment because of military service and who has elected to catch up contributions to the Deferred Compensation Program that would have been permitted had the eligible employee remained in employment with the participating employer during the qualifying period of military service.

(1) Definitions. For purposes of this rule:

(a) “Military service” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

(A) Active duty;

(B) Active duty for training;

(C) Initial active duty for training;

(D) Inactive duty training;

(E) Full-time National Guard duty;

(F) A period for which an individual is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any of the above types of duty; or

(G) A period for which an individual is absent from employment for the purpose of performing funeral honors duty as authorized by 10 USC 12503 or 32 USC 115.

(b) “Uniformed services,” means the Army, Navy, Air force, Marine Corps, Coast Guard, Army National Guard, the Air National Guard, Commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

(2) Eligibility for enrollment: An eligible employee shall be entitled to make Military Catch-Up contributions if:

(a) The eligible employee leaves employment to perform military service and returns to employment with the same participating employer after other than dishonorable discharge from the uniformed services and within the time limits specified in USERRA.

(b) The eligible employee’s cumulative length of absence from employment with the participating employer for military service does not exceed the limits set forth in USERRA.

(c) The eligible employee meets all other eligibility requirements under USERRA.

(d) Submits a timely and complete application.

(3) Application for enrollment: An eligible employee who meets the eligibility criteria for enrollment may apply to catch-up deferred compensation contributions that would have been permitted had the eligible employee remained in employment with the participating employer during the period of military service as provided by USERRA.

(a) Upon reemployment following qualifying military service, an eligible employee may enter into a written agreement to participate in the Military Leave Catch-Up Program to defer an amount annually in addition to the eligible employee’s maximum deferral amount.

- (b) In order for an eligible employee to be enrolled, a properly completed Military Leave Catch-Up Contributions enrollment form provided by the Deferred Compensation Program must be filed with and accepted by the Deferred Compensation Program.
- (c) If the application for enrollment is incomplete, if documentation is missing or information is not legible, or if the application does not comply with the Military Leave Catch-Up Program eligibility for enrollment in section 2 above, then staff will notify the eligible employee within 30 calendar days from the date the enrollment documents are received with the reasons the Deferred Compensation Plan cannot accept the enrollment.
- (d) After receipt of the properly completed enrollment form and required information, Deferred Compensation Program staff will notify an eligible employee of the amount of maximum additional contributions that may be deferred.
- (4) Military Leave Catch-Up Contributions. The additional military leave catch-up contributions shall not exceed the 26 USC 457 maximum annual allowable contributions that would have been permitted had the eligible employee remained in employment with the participating employer during the period of military service. The military leave catch-up contributions are in addition to the maximum allowable contribution limit.
- (a) The maximum allowable military leave catch-up contribution for any calendar year during military service is available only to the extent of unused portions of the maximum allowable contribution for the calendar years during which the eligible employee contributed less than the maximum amount allowable.
- (b) Salary for military leave catch-up purposes shall be based on the compensation the eligible employee would have received had the eligible employee remained actively employed during the period of military service, including any increases that would have been awarded the eligible employee based on longevity of employment or seniority of position.
- (c) Military Leave Catch-Up Contributions are to be made through payroll deductions.
- (d) Eligible employees may change the amount of additional contributions deferred not to exceed the maximum amounts allowable.
- (e) Eligible employees may cancel Military Leave Catch-Up Contributions at any time.
- (f) Military Leave Catch-up Contributions may be made for a period that begins on the date of reemployment and whose length is the lesser of:
- (A) Three times the period of qualified military service; or
- (B) Five years.
- (5) IRC limitations. Eligibility for and limitations to the maximum amount of Military Leave Catch-Up contributions shall be made in accordance with the requirements under USERRA, 38 USC 4301–4333 and 26 USC 414(u)(2) and 457.
- [Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401–243.507