

WAC 415-501-435 May I make deferrals that were missed during periods of uniformed service? (1) **Does the plan have a military make-up provision?** Participants meeting certain eligibility requirements are allowed to make up contributions that were missed during periods of absence from employment due to uniformed service, based on federal laws and regulations of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA, 38 U.S.C. Sections 4301 through 4335).

(2) **What constitutes uniformed service?** For the purposes of this rule, uniformed service includes: The Army, Navy, Air Force, Marines, Coast Guard, the commissioned corps of the Public Health Service, the reserve components of the foregoing services, the National Guard, the National Disaster Medical System, and any other category of persons designated as such by the President in a time of war or emergency. Service includes active duty, active duty for training, initial active duty for training, inactive duty training, examination to determine fitness for duty, funeral honors duty, and full-time National Guard duty. Service may be voluntary or involuntary.

(3) **What is the time limit for making up missed deferrals?** Make-up deferrals must be made within a period not exceeding three times the period of uniformed service, but in no case more than five years. This is referred to as the statutory period. The period begins the day you return to work. Missed deferrals can only be made while you are employed by your original employer. If you leave that employer but return to that employer within the statutory period, you may continue to make up deferrals until the end of the statutory period.

(4) **What is the limit on military make-up contributions?** You may contribute up to the maximum contributions for each calendar year that included absence from employment for uniformed service. In addition, you may contribute up to the maximum for the current calendar year.

EXAMPLE:

John is employed from January to June 2008, and defers \$5,000 into his DCP account during that time. John is on leave for uniformed service from July 2008 through December 2009, one and one-half years. He returns to employment with this original employer in January 2010.

The deferral limits for this period are as follows: **2008** - \$15,500; **2009** - \$16,500; **2010** - \$16,500; **2011** - \$16,500; **2012** - \$17,000; **2013** - \$17,500; and **2014** - \$17,500. John's statutory period for make-up contributions is four and one-half years (through June 2014).

Upon his return to employment, during 2010: For 2010, John may defer \$16,500 out of his regular salary (subject to limitations for includable compensation). During 2010, he may also defer:

- Up to \$10,500 allocable to 2008 (\$15,500 less \$5,000 previously deferred); and
- Up to \$16,500 allocable to 2009.

He decides to contribute \$16,500 for 2010, and \$5,000 for 2008.

During 2011. For 2011, John may defer \$16,500 out of his regular salary. During 2011, he may also defer:

- Up to \$5,500 for 2008 (\$15,500 less \$10,000 total previously deferred).
- Up to \$16,500 for 2009.

(5) **How are make-up deferrals made?** Make-up deferrals are made through payroll deductions after you return to employment. Make-up contributions may be paid using pretax or Roth dollars.

(6) **What conditions must be met to qualify for this provision?** You must not have been released from the uniformed service under dishonorable or other punitive conditions, as set forth in 38 U.S.C. Section 4304. In addition, you must return to employment with your original employer within the time frame specified in USERRA (38 U.S.C. Section 4312) based on your length of service.

[Statutory Authority: RCW 41.50.050, 41.50.770, and SECURE Act 2.0 § 603. WSR 23-18-025, § 415-501-435, filed 8/25/23, effective 9/25/23. Statutory Authority: RCW 41.50.050(5). WSR 14-10-045, § 415-501-435, filed 4/30/14, effective 6/1/14.]