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Your Employer Can Lawfully Suspend Making Contributions to your Section 401(k) Pension Plan, But the Employer Is Not Permitted To Deny you the Opportunity To Make Up Missed Contributions while you Were on Active Duty and To Obtain Employer Matches for those Contributions.
By Captain Samuel F. Wright, JAGC, USN (Ret.)[2]

1.1.2.1—USERRA applies to part-time, temporary, probationary, and at-will employees.
1.3.2.3—Pension credit for service time.
1.8—Relationship between USERRA and other laws/policies.

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[1] I invite the reader's attention to Law Center | ROA. You will find more than 2,300 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), the title 38 chapters that provide for veterans' benefits administered by the Department of Veterans Affairs (VA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

[2] BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 44 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. §§ 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an "of counsel" role. You can reach me by e-mail at samuel@maherlegalservices.com or by telephone at (708) 468-8155.

Q: I am a Captain (O-3) in the Air National Guard (ANG) and a life member of the Reserve Organization of America (ROA). I have read with great interest several of your "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those of us who serve our country in the armed forces, part-time or full-time. I joined ROA as a life member because I want to support this great service that you are providing for National Guard and Reserve service members.

My principal source of support for my family is my job for an intermediate size company—let us call it Coors, Heineken, & Schlitz Incorporated, or CHSI. Like the great majority of private-sector employees in our country, I am an "employee at will." This is a non-union situation. The CHSI employees are not and have never been represented by a labor union.

To attract and retain qualified employees, CHSI many years ago established and has maintained a defined-contribution pension plan, called a "section 401(k) plan."[3] Employees like me are permitted to contribute up to 5% of our CHSI salary to individual employee accounts in the 401(k) pension plan, and CHSI matches those contributions on a 3-1 basis.

I have always made the maximum contribution, 5% of my CHSI salary. I want to provide amply for the retirement years for me and my husband. My elderly parents are in bad shape financially because they never made plans for their retirement and now, they are living on

[3] The name refers to section 401(k) of the Internal Revenue Code, 26 U.S.C. § 401(k).

Social Security alone. It is important to me to ensure that I avoid the mistakes that my parents made when they were my age.

Recently, I was away from my CHSI job for exactly one year of voluntary active duty in the Air Force, from 7/1/2025 through 6/30/2026. I have read and reread your Law Review 24047 (October 2024). I have made it a point to ensure that I meet and have documented that I meet the five USERRA conditions for reemployment. I left my CHSI job in late June 2025 to report to my assigned duty station, and I gave CHSI six weeks of oral and written notice that I would be leaving my job for military service. My voluntary year of active duty counts toward my five-year limit with respect to my employer relationship with CHSI, but I still have four years of head-room in my five-year limit. I served honorably, and I did not receive a disqualifying bad discharge from the Air Force. Indeed, I was not discharged at all, only released from active duty. After I was released from active duty on 6/30/2026, I applied for reemployment the very next day, well within the 90-day deadline to do so.

CHSI put me back to work promptly. When I inquired about resuming my employee contributions to the section 401(k) pension plan, the company's personnel director told me that because of "economic difficulties" the company suspended employer matches to employee contributions to the section 401(k) plan effective 5/1/2026, two months before I was released from active duty. The personnel director told me that the company will make no employer matches to my resumed employee contributions or to my make-up contributions.

Have my USERRA rights been violated?

A: Yes, at least with respect to the employee contributions that you would have made and the employer matches that you would have received between 7/1/2025 (when you entered active duty) and 4/30/2026 (when the employer suspended making employer matches).

Because you are an employee at will and this is a non-union situation, the company is within its rights to suspend making new employer matches, but under section 4318 of USERRA[4] CHSI is required to make up the missed employer matches that you would have received if you had remained continuously employed instead of leaving for military service.

I have placed the entire text of section 4318 at the end of this article.

Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?

A: As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an "of counsel" role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

https://www.lawyersdefendingwarriors.com/about

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[4] 38 U.S.C. § 4318.

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This article is one of more than 2,000 "Law Review" articles available at Law Center | ROA— a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

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Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

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If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002

Here is a recent article reporting that many struggling employers have found it necessary to "suspend" employer matches to employee contributions to section 401(k) pension plans:

https://www.msn.com/en-us/money/other/employers-are-quietly-pausing-401-k-matches-again-the-last-time-this-happened-was-the-2008-recession-and-covid/ar-

AA23vjNR?ocid=msedgdhp&pc=U531&cvid=6a0c76ed18a74ca39ebd9a44056ba16c&ei=11

Here is the entire text of section 4318 of USERRA:

(a)
(1)
(A)
Except as provided in subparagraph (B), in the case of a right provided pursuant to an employee pension benefit plan (including those described in sections 3(2) and 3(33) of the Employee Retirement Income Security Act of 1974) or a right provided under any Federal or State law governing pension benefits for governmental employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.
(B)
In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 8432b of title 5. The first sentence of this subparagraph shall not be construed to affect any other right or benefit under this chapter.
(2)
(A)
A person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services.
(B)
Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the employer or employers maintaining the plan for the purpose of

determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

(b)

(1)

An employer reemploying a person under this chapter shall, with respect to a period of service described in subsection (a)(2)(B), be liable to an employee pension benefit plan for funding any obligation of the plan to provide the benefits described in subsection (a)(2) and shall allocate the amount of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of determining the amount of such liability and any obligation of the plan, earnings and forfeitures shall not be included. For purposes of determining the amount of such liability and for purposes of section 515 of the Employee Retirement Income Security Act of 1974 or any similar Federal or State law governing pension benefits for governmental employees, service in the uniformed services that is deemed under subsection (a) to be service with the employer shall be deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability of the plan described in this paragraph shall be allocated—

(A)

by the plan in such manner as the sponsor maintaining the plan shall provide; or

(B)if the sponsor does not provide—

(i)

to the last employer employing the person before the period served by the person in the uniformed services, or

(ii)

if such last employer is no longer functional, to the plan.

(2)

A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any payment to the plan described in this paragraph shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's service in the uniformed services, such payment period not to exceed five years.

(3)

For purposes of computing an employer's liability under paragraph (1) or the employee's contributions under paragraph (2), the employee's compensation during the period of service described in subsection (a)(2)(B) shall be computed—

(A)

at the rate the employee would have received but for the period of service described in subsection (a)(2)(B), or

(B)

in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

(c)

Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide information, in writing, of such reemployment to the administrator of such plan.

38 U.S.C. § 4318.