



**WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO**

2011 Wisconsin Act 116
[2011 Senate Bill 413]

**Treatment of Military Service
Under the Wisconsin Retirement
System and the Wisconsin Deferred
Compensation Program**

2011 Wisconsin Act 116 modifies current state law with respect to the calculation of death benefits and disability benefits under the Wisconsin Retirement System (WRS) and the treatment of differential wage payments under the WRS and the Wisconsin Deferred Compensation Program (WDC), in which WRS participants may elect to participate. These provisions affect WRS participating employees who leave covered employment for one or more periods of qualified military service.

CALCULATION OF WRS DEATH BENEFITS

As mandated by the federal Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008, Wisconsin Act 116 provides that, for purposes of calculating WRS death benefits, a WRS participant who dies while performing qualified military service must be treated as if the participant were a WRS participating employee between the date the participant left employment to enter active military service and the date of death. Treatment as a WRS participating employee entitles a participant's survivors to receive the full death benefit that they would receive if the participant had died while employed, rather than just the portion based on the employee's contribution. This requirement applies retroactively to a participant who died on or after January 1, 2007 while in qualifying military service. The Act directs the Department of Employee Trust Funds to review and, as necessary, recalculate death benefits paid on behalf of any participant who died while performing military service between January 1, 2007 and the effective date of the law (March 15, 2012).

CALCULATION OF WRS DISABILITY BENEFITS

As permitted though not required under the federal HEART Act, Wisconsin Act 116 provides that, for purposes of calculating WRS disability benefits, a WRS participant who becomes disabled while performing qualified military service and is unable to return to participating employment due to the disability must be treated as if the participant were a participating employee between the date the participant left employment to enter active military service and the date of discharge from military

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

service. This requirement applies retroactively to disabilities occurring on or after January 1, 2007. The change enables the participant to accrue WRS creditable service for the time spent in qualified military service, which may be applied toward qualifying for disability benefits.

TREATMENT OF DIFFERENTIAL WAGE PAYMENTS

Under current state law, a WRS participating employee may receive differential wage payments (the difference between military pay and pay earned on the job) from his or her employer while on active military duty for any period of more than 30 days, if the employer chooses to pay differential wages. Currently, the differential wage payments are treated as supplemental payments. As permitted though not required under the federal HEART Act, Act 116 provides that, retroactive to January 1, 2009, the WRS must treat differential wage payments as WRS earnings, and persons who receive such payments as employees, for purposes of calculating retirement benefits, including a death or disability benefit.

DISTRIBUTIONS FROM WDC

Current state law requires a WDC participant to have terminated employment prior to receiving WDC distributions. As permitted under the HEART Act, Wisconsin Act 116 requires that a person who receives differential pay while on active duty be treated as an employee of the employer providing the pay. However, the HEART Act clarifies that, notwithstanding the treatment as an employee for purposes of differential pay, the person is deemed to have terminated employment for purposes of deferred compensation distributions.

Thus, under the HEART Act and Act 116, a WDC participant who has served on active duty in qualified military service for any period of more than 30 days may elect an early distribution from the WDC, regardless of whether the participant is receiving differential pay. If the participant elects to receive a distribution, the participant may not make an elective deferral or employee contribution for six months after the distribution.

Effective date: March 15, 2012.

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