

# Federal Legislative Brief

## Military Benefits: The HEART Act 2008-13



On June 6, 2008, President Bush signed into law the **Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act)**. This new legislation provides additional benefits for individuals on active duty in the Armed Forces and amends the Uniformed Services Employment and Reemployment Rights Act (USERRA). The Act provides for liberalization of pension as well as welfare plan rules including the ability to cash out unused contributions from a health FSA (at the employer's option). The purpose of this memorandum is to highlight the pension rules and to discuss the welfare plan changes in more depth. For a copy of the actual legislation please visit our website at <http://www.abferisa.com/documents/HEART%20bill.pdf>.

### Pension Plan Highlights

The following is a summary of the HEART Act provisions applicable to tax qualified plans. These provisions are effective retroactively to January 1, 2007, unless otherwise indicated.

1. 401(k): Make-up contributions now permitted;
2. In service distributions or early withdrawals from 401(k) or 403(B) plans with no (10%) excise tax applicable under certain circumstances;
3. Can't discriminate against survivors of military personnel in paying survivors benefits (accelerated vesting, ancillary life benefits, or other benefits payable on death of an employee, in the event the employee dies during military service);
4. Differential pay to be treated as wages effective January 1, 2009 for pension/401(k) contribution purposes (Note: it also provides tax credits to small employers who provide differential pay. Differential pay is defined as the difference between military pay and the individual's pay as an active employee);
5. Optional Provision: Credit service in military as active employment up to date of death for purposes of benefit accrual (extending Heroes Act provision);
6. Rollovers: Recipients of a military death gratuity are eligible to roll this amount into a Roth IRA or Coverdell Education Savings Account, as long as the rollover occurs within the year following receipt of the gratuity payment. The rollover capability applies to gratuity payments with respect to deaths that occurred after October 7, 2001 as long as they are made by June 6, 2009.

### Welfare Plan Provisions

1. **Health Care Spending Accounts under IRC 125 Plans.** The Act permits but does not require employers to amend their IRC Section 125 (Cafeteria) Plans to permit the distribution of unused account balances to reservists called to active duty under the following circumstances:
  - a. The period of active duty is for at least 180 days;
  - b. The amount withdrawn is no greater than the actual cash contributions made to the Plan in that Plan Year up to the date of the withdrawal;
  - c. The request for distribution is made and the distribution occurs no later than the last day of the Plan Year, or the end of the run out period or the end of the period in which claims may be filed, which ever is later; and,
  - d. The Amendment is effective on or after June 17, 2008.

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The amount distributed is treated as taxable income and subject to withholding and employment taxes.

2. **Mental Health Parity Act.** The HEART Act also provides for an extension of the original Mental Health Parity Act through December 31, 2008. In the meantime, Congress is attempting to pass new mental health legislation that would require health plans to treat mental illness as any other illness.

## Other Recently Enacted Military Benefits

The following are highlights of recently enacted military benefits for your reference. Please refer to our earlier legislative updates (except for TRICARE) for details.

1. Expansion of FMLA (Leg. Update 2008-5)
  - a. **Call to active duty:** Spouse, son, daughter, parent, or next of kin of active service member can take up to 12 weeks for a qualifying exigency (e.g. day care needs).
  - b. **Caregiver leave:** Spouse, son, daughter, or next of kin to care for a service member undergoing treatment due to injury or illness incurred in line of duty can take up to 26 weeks.
2. California law (AB 392) (Leg. Update 2008-3)
  - a. Spousal leave up to 10 days while service member on qualified military leave.
  - b. Leave not to be offset against other paid time-off benefits.
3. TRICARE (no leg. Update available)
  - a. Proposed regulations (effective 1/1/08).
  - b. Prohibits employers from incentivizing TRICARE beneficiaries to drop employer group coverage or by offering TRICARE supplement plans (other than cafeteria plans available to all employees).
  - c. Employer plan will always be primary.
  - d. If supplemental plan offered by an insurer or through a non-employer sponsored VEBA, TRICARE will be primary.

For further information regarding these matters feel free to contact us.

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