

Heroes Earnings Assistance and Relief Act of 2008 (H.R. 6081)



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The President has signed the Heroes Earnings Assistance and Relief Act of 2008 (HEART) into law, creating additional benefits for those called up to military service through the end of 2008 and extends the Mental Health Parity Act. HEART will affect employers' benefit programs by amending the Internal Revenue Code, ERISA, the Public Health Service Act and the Social Security Act. Below are summaries of the aspects of the Act which directly affect benefit plans.

Qualified Reservist Distributions from Cafeteria Plans:

The language will allow reservists called to active duty to make distributions from their Health Flexible Spending Accounts. Any amounts withdrawn under this provision will be immediately taxable to the employee but will allow the employee to avoid the 'use it or lose it' aspect of the Health Flexible Spending Account. The following requirements must be met to make the "Qualified Reservist Distribution":

- Reservist must be called or ordered to active duty;
- The call/order must be for a period of at least 180 days (or an indefinite period);
- Distribution must be made between the date of the order/call and the last date that reimbursement from the Health Flexible Spending Account could be made in the plan year in which the call/order happens;

Once an employer determines it would like to extend this additional benefit to participants, Flexible Spending Account documents should be amended. Once completed, Summary of Material Modifications must be distributed to all participants.

Survivor Benefits-Retirement Plans

For qualified retirement plans, including 457(b) and 403(b), the same benefits provided to the survivors of active employees must be extended to the survivors of employees who die while on active military duty. For example, accelerated vesting schedules must be granted. To accomplish these requirements, employers are to pay out the benefits as if the participant was actively at work the day before his/her death. Amendments to documents must be made on or before the last day of the plan year beginning on or before January 1, 2010.

Retirement Plan Early Withdrawals

In 2006, reservists called to active duty were granted an exception to the early withdrawal penalty (10%) from a qualified retirement plan. The exception expired as of December 31, 2007. The Act makes the exception permanent back to December 31, 2007.

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Mental Health Parity

The Mental Health Parity Act of 1996, which required certain health plans to provide the same coverage for mental health benefits as it does for medical and surgical benefits, expired on December 31, 2007. The HEART Act of 2008 extends the limited parity requirements for one year.

For employers with staff who are called to active military duty, these are important new changes to keep in mind when employees file for benefits. If you have any questions, please contact your Account Executive for additional information.

