



Goodman Settlement

On March 17, 2014, a settlement between the City of New York and the United States Attorney's Office in the case of *Goodman, et al. v. City of New York, et al.* ("Goodman") became effective. This settlement was the result of litigation filed by the United States Attorney's Office in the Southern District of New York pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994. 38 U.S.C. §§ 4301-35 ("USERRA"). The plaintiffs are a class of retired New York City Police Department ("NYPD") uniformed members of the service who, on or after September 11, 2001, performed active military service while employed by the NYPD. Pursuant to the *Goodman* Settlement, active military service is defined as "active duty, active duty for training, initial active duty for training, inactive duty for training, full-time National Guard duty, a period for which a person is absent from a position or employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty."

USERRA requires military service members' pensions – as well as employer and employee contributions to pension plans – to be computed based on the rate of compensation the employees would have received but for their periods of military service. Pursuant to the *Goodman* Settlement, on or after March 18, 2014, if a NYCERS member returns to City service from active military service, NYCERS must calculate the member's pension based on the above calculation. Accordingly, in calculating the member's pension it must take into account (among other things): cost of living adjustments, wage increases, overtime compensation, night shift differential, holiday pay, worked vacation, portal-to-portal, and allowable longevity payments ("Pensionable Earnings") that the member would have earned if he or she had not taken military leave.

Who is Affected by the Settlement Agreement?

A few different classes of NYCERS members and pensioners are affected as the result of the *Goodman* Settlement.

1. Pensioners who received a pension check prior to October 10, 2004 but who subsequently performed military service between receipt of his or her first pension check and October 10, 2004.
 - a. You may be ineligible for a recalculation. You should contact NYCERS to find out what documents you need to submit to NYCERS to determine if you are eligible for a recalculation.

2. Pensioners who performed active military service on or after September 11, 2001 and received a pension check between October 10, 2004 and March 17, 2014.
 - a. These pensioners will automatically be recalculated to take into account any Pensionable Earnings that the member would have earned if he or she had not taken military leave. If the recalculation shows that their monthly benefit would increase as a result of the recalculation, then NYCERS will send these members a letter with the revisions.
3. Pensioners who performed active military service on or after September 11, 2001 and returned from such service on or before March 17, 2014 and received their first pension check after March 17, 2014.
 - a. These pensioners may have their pension recalculated to take into account any Pensionable Earnings that the pensioner would have earned if he or she had not taken military leave. Once NYCERS is notified of the pensioner's active military service, NYCERS will send the pensioner a letter informing the pensioner of how to request a recalculation. If the pensioner has already notified NYCERS of his or her active military service, a letter will automatically be sent to the pensioner.
4. Members who performed active Military Service on or after September 11, 2001 and returned from such service on or before March 17, 2014.
 - a. These members may have their pension recalculated to take into account any Pensionable Earnings that the member would have earned if he or she had not taken military leave. Once a member notifies NYCERS of his or her active military service, NYCERS will send the member a letter informing the member of how to request a recalculation. If the member has already notified NYCERS of his or her active military service, a letter will automatically be sent to the member.
5. Members who were on active military duty on or after September 11, 2001 and return from service on or after March 18, 2014.
 - a. These members must have their pensionable earnings calculated pursuant to the settlement agreement.

What Does the Recalculation Entail?

For the period of time a member performed active military service after September 11, 2001, NYCERS will determine how much compensation the member would have earned, but for the period of active military service.

To perform this calculation, NYCERS will average the Pensionable Earnings the member would have earned "but for" his or her period(s) of Active Military Service. To the extent that the compensation "is not reasonably certain" it shall be determined based upon the average amount of Pensionable Earnings

earned during the 12 months immediately preceding his or her active military service. NYCERS will then add the base pay to the imputed earnings to reach the pensionable earnings for the period of active military service. If pensioners receive a benefit from the recalculation, then his/her pension will be adjusted by the actuarial equivalent of any shortage resulting from any additional employee pension contributions that you would have owed as a result of the recalculation. Members are responsible for making additional pension contributions to NYCERS.

For the purpose of computing the members'/pensioners' Pensionable Earnings while on military leave, active military service begins on the date a member begins his or her leave from City service; this may include use of annual leave and/or compensatory time. The active military service is deemed completed on the day before the member returns to City service.

Individuals Whose Membership with NYCERS Has Ceased

NYCERS members who were on active military service between September 11, 2001 and March 17, 2014, but are no longer members of NYCERS because of a transfer to another system or withdrawal of member contributions are not entitled to a recalculation. If a former NYCERS member transferred to another public retirement system, he or she should make an application to the new retirement system to be recalculated in accordance with statutory requirements of USERRA.