

## Article - State Personnel and Pensions

§38–102.

(a) Except as provided in subsections (b) and (c) of this section, during a period that a member of a State or local retirement or pension system is absent from employment for military service, the member or the member's estate, under a State or local retirement or pension system, is not entitled to:

- (1) ordinary disability benefits;
- (2) accidental disability benefits;
- (3) death benefits;
- (4) optional allowances; or
- (5) other disability or death benefits.

(b) (1) This subsection applies to an individual who:

(i) is a member of a State or local retirement or pension system as defined in § 37–101(r) of this article; and

(ii) dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code.

(2) To the extent required by § 401(a)(37) of the Internal Revenue Code, an individual described under paragraph (1) of this subsection shall receive any additional benefits that the system provides for any member who resumes employment after completing military service and then dies, including any death benefits that are contingent on a member's death while employed.

(c) (1) This subsection applies to an individual who:

(i) is a member of a State or local retirement or pension system as defined in § 37–101(r) of this article; and

(ii) becomes disabled or dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code.

(2) (i) To the extent permitted by § 414(u)(8) of the Internal Revenue Code, a State or local retirement or pension system may provide that, for benefit accrual purposes, an individual described under paragraph (1) of this subsection shall be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability.

(ii) If a State or local retirement or pension system provides benefits

under subparagraph (i) of this paragraph, the system may choose to provide either partial or full benefits, but whichever option is chosen, it shall be applied to all similarly situated members in a reasonably equivalent manner.

(d) (1) This subsection applies to an individual who:

(i) is a member of a State or local retirement or pension system as defined in § 37–101(r) of this article; and

(ii) on or after January 1, 2009, receives differential wage payments from an employer while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code.

(2) (i) To the extent permitted by § 3401(h) of the Internal Revenue Code, an individual described under paragraph (1) of this subsection shall be treated as employed by the employer described in paragraph (1)(ii) of this subsection while performing qualified military service and the differential wage payments shall be treated as compensation.

(ii) To the extent permitted by § 414(u)(12) of the Internal Revenue Code, a State or local retirement or pension system may provide benefits to the individual based on the differential wage payments.

(iii) If a State or local retirement or pension system provides benefits under subparagraph (ii) of this paragraph, the benefits shall be provided to all similarly situated members in a reasonably equivalent manner.