

Settlement agreement reached between the City of New York and the United States Attorney's Office in *Goodman, et al. v. City of New York, et al.*

The settlement agreement reached between the City of New York and the United States Attorney's Office in *Goodman, et al. v. City of New York, et al.* becomes effective March 17, 2013. This case was filed by the United States Attorney's Office for 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 performed active military service, while employed by the NYPD, on or after September 11, 2001. 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 of 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 Settlement Agreement in the Goodman case, the Police Pension Fund ("PPF") must impute, for purposes of pension calculations, overtime and night-shift differential compensation that members would have earned had they not taken military leaves during their careers with the NYPD.

Who is Affected by this Settlement Agreement?

Any PPF member who completed military leaves after September 11, 2001.

PPF will be recalculating the retired class member's pension in accordance with the settlement agreement. Class members will be notified in writing when their pensions have been recalculated; all recalculations must be completed by March 17, 2015. Class members would have received a settlement notice, and must not have filed an opt out with the Court.

Active PPF members who performed Active Military Service and returned to NYPD service between September 11, 2001 and March 17, 2014 may voluntarily elect to have their pensionable earnings recalculated. Such members may schedule a counseling session with a military advisor by contacting Membership Services at (212) 693-6860 and/or complete PPF Form 86: Recalculation Request. [link to form]

Active PPF members who return to the NYPD from Active Military Service on or after March 18, 2014 must have their pensionable earnings calculated pursuant to the settlement agreement.

What Does the Recalculation Entail?

For each period of time when a member performed active military service after September 11, 2001, PPF will determine how much compensation the member would have earned, but for the period of military service. For example, the member may ordinarily have earned overtime or night-shift differential compensation, but missed the opportunity to do so because of military obligations. Military service begins on the day a member begins his or her leave from the NYPD for the purposes of military service; this may include use of annual leave and/or compensatory time. The military service is deemed completed on the day before the member returns to the NYPD.

To determine the amount of earnings a member would have earned, PPF will average any additional differential payments and overtime the member earned during the 12 months immediately preceding his or her active military service. PPF will then add the base pay to the imputed earnings to reach the pensionable earnings for the military leave. Members are responsible for making additional pension contributions to the Fund.

Individuals Whose Membership with PPF Has Ceased

Uniformed NYPD employees who went on military leaves between September 11, 2001 and March 17, 2014, but are no longer members of PPF because of a transfer to another system or withdrawal of member contributions are not entitled to recalculation. If a former 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 the statutory requirements of USERRA. Please note that active membership also ceases by death or retirement; however, deceased or retired members who are eligible for pension recalculation were identified as class members of the Goodman case.

To read the settlement agreement in its entirety, *please click here*.