

ENROLLED

CS/CS/HB 1121

2023 Legislature

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An act relating to the Florida Retirement System; amending s. 121.021, F.S.; revising and providing definitions; amending s. 121.091, F.S.; authorizing employers to establish volunteer programs; establishing criteria for such programs; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (39) of section 121.021, Florida Statutes, is amended, and subsection (65) is added to that section, to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(39) (a) "Termination" occurs, except as provided in paragraphs ~~paragraph~~ (b) and (c), when a member ceases all employment, which term includes the provision of services, ~~relationships with all participating~~ employers, however:

1. For retirements effective before July 1, 2010, if a member is employed by any ~~such~~ employer within the next calendar month, termination shall be deemed not to have occurred. A leave of absence constitutes a continuation of the employment relationship, except that a leave of absence without pay due to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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26 | disability may constitute termination if such member makes
 27 | application for and is approved for disability retirement in
 28 | accordance with s. 121.091(4). ~~The department or state board may~~
 29 | ~~require other evidence of termination as it deems necessary.~~

30 | 2. For retirements effective on or after July 1, 2010, if
 31 | a member is employed by any ~~such~~ employer within the next 6
 32 | calendar months, termination shall be deemed not to have
 33 | occurred. A leave of absence constitutes a continuation of the
 34 | employment relationship, except that a leave of absence without
 35 | pay due to disability may constitute termination if such member
 36 | makes application for and is approved for disability retirement
 37 | in accordance with s. 121.091(4). ~~The department or state board~~
 38 | ~~may require other evidence of termination as it deems necessary.~~

39 | (b) "Termination" for a member ending participation
 40 | ~~electing to participate~~ in the Deferred Retirement Option
 41 | Program occurs when the program participant ceases all
 42 | employment, which term includes the provision of services,
 43 | ~~relationships with all participating~~ employers in accordance
 44 | with s. 121.091(13), however:

45 | 1. For termination dates occurring before July 1, 2010, if
 46 | a ~~the~~ member is employed by any ~~such~~ employer within the next
 47 | calendar month, termination shall ~~will~~ be deemed not to have
 48 | occurred, except as provided in s. 121.091(13)(b)4.c. A leave of
 49 | absence constitutes ~~shall constitute~~ a continuation of the
 50 | employment relationship.

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51 2. For termination dates occurring on or after July 1,
 52 2010, if a ~~the~~ member becomes employed by any ~~such~~ employer
 53 within the next 6 calendar months, termination shall ~~will~~ be
 54 deemed not to have occurred, except as provided in s.
 55 121.091(13)(b)4.c. A leave of absence constitutes a continuation
 56 of the employment relationship.

57 (c) Effective July 1, 2011, "termination" for a member
 58 receiving a refund of employee contributions occurs when a
 59 member ceases all employment, which term includes the provision
 60 of services, relationships with all participating employers for
 61 3 calendar months. A leave of absence constitutes a continuation
 62 of the employment relationship.

63
 64 All terminations must be a termination of employment consistent
 65 with 26 C.F.R. s. 1.409A-1(h)(1)(ii). After July 1, 2023,
 66 volunteer services do not constitute employment by, or provision
 67 of services to, an employer. The department or state board may
 68 require any evidence of termination necessary to determine
 69 compliance with this chapter or the rules adopted thereunder.

70 (65) "Volunteer services" means services provided in
 71 accordance with s. 121.091(15).

72 Section 2. Subsection (15) is added to section 121.091,
 73 Florida Statutes, to read:

74 121.091 Benefits payable under the system.—Benefits may
 75 not be paid under this section unless the member has terminated

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76 employment as provided in s. 121.021(39) (a) or begun
 77 participation in the Deferred Retirement Option Program as
 78 provided in subsection (13), and a proper application has been
 79 filed in the manner prescribed by the department. The department
 80 may cancel an application for retirement benefits when the
 81 member or beneficiary fails to timely provide the information
 82 and documents required by this chapter and the department's
 83 rules. The department shall adopt rules establishing procedures
 84 for application for retirement benefits and for the cancellation
 85 of such application when the required information or documents
 86 are not received.

87 (15) VOLUNTEER SERVICES.—Employers may establish
 88 postemployment volunteer programs to allow retirees to provide
 89 civic, charitable, and humanitarian services during the first 12
 90 calendar months following retirement without causing the retiree
 91 to violate the requirement concerning termination of employment
 92 as defined in 26 C.F.R. s. 1.409A-1(h) (1) (ii), provided that the
 93 program meets all of the following criteria:

94 (a) Before the date of retirement, there was no agreement
 95 or understanding between the employer and the retiree that the
 96 retiree would provide any service for the employer.

97 (b) The employer or a third party may not provide any form
 98 of compensation, including any cash equivalents, to a volunteer
 99 for his or her volunteer service.

100 (c) Except as otherwise provided in law, a volunteer may

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101 not be provided any employee benefits, including health or life
 102 insurance benefits. However, a volunteer may be provided certain
 103 perquisites necessary for, and for the limited purpose of,
 104 completing tasks associated with the volunteer program, such as
 105 an assigned uniform or the provision of equipment.

106 (d) The number of volunteer hours per week, including
 107 training hours, that the volunteer may provide is no more than
 108 20 percent of the number of hours that the volunteer was
 109 expected to work per week before his or her date of retirement.

110 (e) There is a clear distinction between the duties of a
 111 volunteer and the duties of an employee.

112 (f) The schedule of a volunteer, including the number of
 113 hours volunteered and the number and type of assignments for
 114 which he or she agrees to volunteer, is controlled by the
 115 volunteer.

116 (g) The employer and the retiree are both required to
 117 maintain adequate records to document adherence to the criteria
 118 listed in this subsection. The records must be made available to
 119 the department or state board upon request.

120 Section 3. This act shall take effect July 1, 2023.