

CHAPTER 2023-316

Committee Substitute for Committee Substitute for House Bill No. 1121

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

2. For retirements effective on or after July 1, 2010, if a member is employed by any ~~such~~ employer within the next 6 calendar months, 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 disability may constitute termination if such member makes application for and is approved for disability retirement in accordance with s. 121.091(4). ~~The department or state board may require other evidence of termination as it deems necessary.~~

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

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

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

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

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

(65) “Volunteer services” means services provided in accordance with s. 121.091(15).

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

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department’s rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

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

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

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

(c) Except as otherwise provided in law, a volunteer may not be provided any employee benefits, including health or life insurance benefits. However, a volunteer may be provided certain perquisites necessary for, and for the limited purpose of, completing tasks associated with the volunteer program, such as an assigned uniform or the provision of equipment.

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

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

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

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

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

Approved by the Governor June 30, 2023.

Filed in Office Secretary of State June 30, 2023.