

CS/HB 1121

2023

1 A bill to be entitled
2 An act relating to the Florida Retirement System;
3 amending s. 121.021, F.S.; revising and providing
4 definitions; amending s. 121.091, F.S.; authorizing
5 employers to establish volunteer programs;
6 establishing criteria for such programs; providing an
7 effective date.

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

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

14 121.021 Definitions.—The following words and phrases as
15 used in this chapter have the respective meanings set forth
16 unless a different meaning is plainly required by the context:

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

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

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.

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 as defined
65 in 26 C.F.R. s. 1.409A-1(h)(1)(ii). Volunteer services do not
66 constitute employment by, or provision of services to, an
67 employer. The department or state board may require any evidence
68 of termination necessary to determine compliance with this
69 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

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

101 not be provided any employee benefits, including health or life
 102 insurance benefits. However, a volunteer may be provided certain
 103 prerequisites necessary to complete tasks associated with the
 104 volunteer program, such as an assigned uniform or the provision
 105 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.