

By Senator Perry

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1 A bill to be entitled
2 An act relating to retirement; amending s. 121.021,
3 F.S.; revising the definition of the term
4 "termination" to clarify circumstances under which a
5 Florida Retirement System member is deemed to have
6 terminated employment with an employer; specifying
7 that a termination must adhere to a specified Internal
8 Revenue Service regulation; specifying that the
9 provision of volunteer services does not constitute
10 employment by, or the provision of services to, a
11 participating employer; defining the term "volunteer
12 services"; amending s. 121.091, F.S.; conforming a
13 provision to changes made by the act; authorizing the
14 Division of Retirement of the Department of Management
15 Services to adopt certain rules governing the
16 provision of volunteer services by retirees to
17 employers; authorizing employers to establish
18 volunteer programs in accordance with division rule;
19 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsection (39) of section 121.021, Florida
24 Statutes, is amended, and subsection (65) is added to that
25 section, to read:

26 121.021 Definitions.—The following words and phrases as
27 used in this chapter have the respective meanings set forth
28 unless a different meaning is plainly required by the context:

29 (39) (a) "Termination" occurs, except as provided in

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30 ~~paragraphs~~ paragraph (b) and (c), when a member ceases all
31 employment relationships with, and ceases providing services to,
32 all participating employers, however:

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

43 2. For retirements effective on or after July 1, 2010, if a
44 member is employed by, or provides services to, any ~~such~~
45 employer within the next 6 calendar months, termination shall be
46 deemed not to have occurred. A leave of absence constitutes a
47 continuation of the employment relationship, except that a leave
48 of absence without pay due to disability may constitute
49 termination if such member makes application for and is approved
50 for disability retirement in accordance with s. 121.091(4). ~~The~~
51 ~~department or state board may require other evidence of~~
52 ~~termination as it deems necessary.~~

53 (b) "Termination" for a member ending participation
54 ~~electing to participate~~ in the Deferred Retirement Option
55 Program occurs when the program participant ceases all
56 employment relationships with, and ceases providing services to,
57 all participating employers in accordance with s. 121.091(13),
58 however:

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59 1. For termination dates occurring before July 1, 2010, if
60 a the member is employed by, or provides services to, any such
61 employer within the next calendar month, termination shall will
62 be deemed not to have occurred, except as provided in s.
63 121.091(13)(b)4.c. A leave of absence constitutes shall
64 constitute a continuation of the employment relationship.

65 2. For termination dates occurring on or after July 1,
66 2010, if a the member becomes employed by, or provides services
67 to, any such employer within the next 6 calendar months,
68 termination shall will be deemed not to have occurred, except as
69 provided in s. 121.091(13)(b)4.c. A leave of absence constitutes
70 a continuation of the employment relationship.

71 (c) Effective July 1, 2011, "termination" for a member
72 receiving a refund of employee contributions occurs when a
73 member ceases all employment relationships with, and ceases
74 providing services to, all participating employers for 3
75 calendar months. A leave of absence constitutes a continuation
76 of the employment relationship.

77
78 All terminations must be a termination of employment as defined
79 in 26 C.F.R. s. 1.409A-1(h)(1)(ii). Volunteer services do not
80 constitute employment by, or the provision of services to, an
81 employer. The department or the state board may require any
82 evidence of termination necessary to determine compliance with
83 this chapter or any rules adopted thereto.

84 (65) "Volunteer services" means services provided in
85 accordance with rules adopted pursuant to s. 121.091(15).

86 Section 2. Paragraph (c) of subsection (4) of section
87 121.091, Florida Statutes, is amended, and subsection (15) is

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88 added to that section, to read:

89 121.091 Benefits payable under the system.—Benefits may not
90 be paid under this section unless the member has terminated
91 employment as provided in s. 121.021(39) (a) or begun
92 participation in the Deferred Retirement Option Program as
93 provided in subsection (13), and a proper application has been
94 filed in the manner prescribed by the department. The department
95 may cancel an application for retirement benefits when the
96 member or beneficiary fails to timely provide the information
97 and documents required by this chapter and the department's
98 rules. The department shall adopt rules establishing procedures
99 for application for retirement benefits and for the cancellation
100 of such application when the required information or documents
101 are not received.

102 (4) DISABILITY RETIREMENT BENEFIT.—

103 (c) *Proof of disability.*—The administrator, before
104 approving payment of any disability retirement benefit, shall
105 require proof that the member is totally and permanently
106 disabled as provided herein:

107 1. Such proof shall include the certification of the
108 member's total and permanent disability by two licensed
109 physicians of the state and such other evidence of disability as
110 the administrator may require, including reports from vocational
111 rehabilitation, evaluation, or testing specialists who have
112 evaluated the applicant for employment. A member whose position
113 with an employer requires that the member work full time outside
114 this state in the United States may include certification by two
115 licensed physicians of the state where the member works. A
116 member who is receiving care at a federal Veterans Health

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117 Administration facility may include certification by two
118 licensed physicians working at the facility.

119 2. It must be documented that:

120 a. The member's medical condition occurred or became
121 symptomatic during the time the member was employed in an
122 employee/employer relationship with his or her employer;

123 b. The member was totally and permanently disabled at the
124 time he or she terminated covered employment; and

125 c. The member has not been employed with, or provided any
126 services to, any other employer after such termination.

127 3. If the application is for in-line-of-duty disability, in
128 addition to the requirements of subparagraph 2., it must be
129 documented by competent medical evidence that the disability was
130 caused by a job-related illness or accident which occurred while
131 the member was in an employee/employer relationship with his or
132 her employer.

133 4. The unavailability of an employment position that the
134 member is physically and mentally capable of performing will not
135 be considered as proof of total and permanent disability.

136 (15) VOLUNTEER SERVICES.—The division may adopt rules
137 establishing criteria for volunteer services that retirees may
138 provide to an employer while still being deemed to have had a
139 termination occur as defined in s. 121.021. Employers may
140 establish volunteer programs in accordance with any such rules
141 adopted pursuant to this subsection.

142 Section 3. This act shall take effect July 1, 2022.