



248624

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2023	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Burton) recommended the following:

Senate Amendment (with title amendment)

Delete lines 22 - 131

and insert:

employment, including 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



248624

11 relationship, except that a leave of absence without pay due to
12 disability may constitute termination if such member makes
13 application for and is approved for disability retirement in
14 accordance with s. 121.091(4). ~~The department or state board may~~
15 ~~require other evidence of termination as it deems necessary.~~

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

25 (b) "Termination" for a member ending participation
26 ~~electing to participate~~ in the Deferred Retirement Option
27 Program occurs when the program participant ceases all
28 employment, including the provision of services, relationships
29 with all participating employers in accordance with s.
30 121.091(13), however:

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

37 2. For termination dates occurring on or after July 1,
38 2010, if a the member becomes employed by any ~~such~~ employer
39 within the next 6 calendar months, termination shall ~~will~~ be



248624

40 deemed not to have occurred, except as provided in s.
41 121.091(13)(b)4.c. A leave of absence constitutes a continuation
42 of the employment relationship.

43 (c) Effective July 1, 2011, "termination" for a member
44 receiving a refund of employee contributions occurs when a
45 member ceases all employment, including the provision of
46 services, relationships with all participating employers for 3
47 calendar months. A leave of absence constitutes a continuation
48 of the employment relationship.

49
50 All terminations must be a termination of employment as defined
51 in 26 C.F.R. s. 1.409A-1(h)(1)(ii). Volunteer services do not
52 constitute employment by, or provision of services to, an
53 employer. The department or state board may require any evidence
54 of termination necessary to determine compliance with this
55 chapter or the rules adopted thereunder.

56 (65) "Volunteer services" means services provided in
57 accordance with s. 121.091(15).

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

60 121.091 Benefits payable under the system.—Benefits may not
61 be paid under this section unless the member has terminated
62 employment as provided in s. 121.021(39)(a) or begun
63 participation in the Deferred Retirement Option Program as
64 provided in subsection (13), and a proper application has been
65 filed in the manner prescribed by the department. The department
66 may cancel an application for retirement benefits when the
67 member or beneficiary fails to timely provide the information
68 and documents required by this chapter and the department's



248624

69 rules. The department shall adopt rules establishing procedures
70 for application for retirement benefits and for the cancellation
71 of such application when the required information or documents
72 are not received.

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

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

83 (b) The employer or any third party may not provide a form
84 of compensation, including cash equivalents, to a volunteer for
85 the volunteer services.

86 (c) Except as otherwise provided in this chapter, employee
87 benefits, including health or life insurance benefits, may not
88 be provided to a volunteer. However, certain prerequisites that
89 are necessary to complete tasks associated with the volunteer
90 program, such as an assigned uniform or the provision of
91 equipment, are permissible.

92 (d) The number of volunteer hours per week, including
93 training, is limited to no more than 20 percent of the amount of
94 time that was expected of the retiree per week before his or her
95 date of retirement.

96 (e) A clear distinction between the duties of a volunteer
97 and the duties of an employee is required.



248624

98 (f) Volunteers must maintain control of their volunteer
99 schedule, including the number of hours volunteered and
100 assignments for which they agree to volunteer.

101 (g) Adequate volunteer program record keeping must be
102 maintained by both the employer and the volunteer to document
103 adherence to the criteria listed in this subsection. The records
104 must be made available to the department upon request.

105
106 ===== T I T L E A M E N D M E N T =====

107 And the title is amended as follows:

108 Delete lines 5 - 9

109 and insert:

110 services"; amending s. 121.091, F.S.; authorizing
111 employers to establish post-employment volunteer
112 programs to allow retirees to provide certain services
113 during a specified timeframe; requiring such programs
114 to meet specified criteria;