

FLORIDA SHERIFFS ASSOCIATION

LEGAL ALERT



REEMPLOYMENT AFTER RETIREMENT: Returning to Work as a Volunteer or Employee of the Sheriff's Office

Recently, the Division of Retirement ("DOR") of the Florida Department of Management Services informed several retiring members of sheriff's offices that they could not be retained in a reserve status as volunteers without jeopardizing their retirement benefits. Under Florida law, employees are required to terminate all employment relationships with a Florida Retirement System ("FRS") employer upon separating from the agency. The term "employment relationship" is not defined within the statutes or administrative rules, but now appears to be broadly construed by DOR to include volunteers.

DOR's statutory interpretation applies regardless of whether reserve officers are compensated for their services. According to DOR, an employment relationship continues as a result of the reserve status, even though the reserve deputies receive no compensation. A retiree who returns to work prior to the required waiting period, even in a reserve status, risks the loss of retirement status and received pension benefits.

Background

Section 121.091(9)(c),(d), Florida Statutes, provides that an employee who retires from an FRS agency may not be reemployed by another FRS-participating employer for six months. Additionally, the employee must meet the definition of termination in section 121.021(39), Florida Statutes, and the employee may not receive both salary and retirement benefits for six months after meeting the definition of termination.

Termination is defined in section 121.09(39) to mean that an employee "ceases all employment relationships with participating [FRS] employers." See also Fla. Admin. Code Rule 60S-6.001(69). Specifically, an FRS employee must terminate all employment relationships with their employer during the first six months after their (a) Deferred Retirement Option Program ("DROP") termination date, (b) service retirement effective date, or (c) distribution (for defined contribution plans) date. The term "employment relationships" is not defined in the statute or administrative rules, and in the past, sworn personnel upon retiring have been permitted to be retained as reserve officers without any impact on their retirement benefits.

However, DOR now broadly construes an employment relationship to include a volunteer capacity. Therefore, even if a retiree returns to work with an FRS-participating employer as a volunteer (i.e., an individual that receives no compensation) before satisfying the required waiting period, the retirement may be voided, and the retiree may be required to repay all benefits received, including any payments received pursuant to DROP.

In other words, DOR requires that retirees remain unemployed by any FRS-participating employer for a period of six months after the effective date of retirement, regardless of whether the retiree is being compensated. In addition, with exception of those who are reemployed as school resource officers¹, retired law enforcement officers who return to work in months 7 through 12 cannot receive their retirement benefits, because they are not permitted to receive both a salary and pension benefits in the same month. After 12 calendar months from retirement, an employee can receive retirement benefits without limitation while working for an FRS employer.

Conclusion

As a result of this interpretation by DOR, sheriffs should reevaluate any practice of appointing retired deputies as reserve officers at the time they separate from the agency. As previously stated, a retiree who returns to work for an FRS employer during the limitations period in any capacity, including as a volunteer, risks losing retirement status and may be forced to repay pension benefits received. Given these consequences, it is important that sworn and non-sworn personnel seek advice from DOR before entering into any type of working relationship with an FRS employer prior to the expiration of the limitations period.

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Questions concerning this legal alert should be directed to the sheriff's legal advisor or may otherwise be directed to Wayne Evans, General Counsel for the FSA, at revans@anblaw.com, 850.561.3503.

¹ See § 121.091(9)(f), Fla. Stat.

