



Department of Management Services
Division of Human Resource Management

PROGRAM GUIDELINES

SUBJECT: Reemployment of Florida Retirement System Retirees in the State Personnel System	
STATUTORY/RULE REFERENCE: <i>Section 121.091(9), Florida Statutes (F. S.)</i>	EFFECTIVE DATE: July 27, 2010
FORMS: <i>FRS Certification Form (Revised 04-2010)</i>	ADDITIONAL REFERENCE MATERIAL: http://www.myfrs.com/portal/server.pt/community/publications/251 <i>See Publications #34, #38, and #39 for Reference Tables Summarizing Reemployment Provisions.</i>

I. SCOPE AND PURPOSE.

As agencies strive to recruit and select the best candidates for employment, adherence to all pertinent provisions governing reemployment of Florida Retirement System retirees continues to be a critical factor. However, the 2009 Florida Legislature enacted several changes to these reemployment provisions which increase the amount of oversight that will be required. Consequently, this document summarizes these provisions and addresses frequently asked questions. It may be used as a reference tool by human resource staff and hiring managers of the State Personnel System. It is intended to provide general guidance in administering the re-employment provisions of the Florida Retirement System (FRS)¹. However, in the event of any discrepancy between this document and the laws and rules governing the FRS, the final authority is the FRS statutes, rules, policies and requirements, as administered by the Florida Department of Management Services, Division of Retirement and the State Board of Administration (SBA).

Note: There are still no restrictions on receiving retirement benefits if the retiree is working for a private employer or a public employer that does not participate in the FRS. Furthermore, there is still a total prohibition against any form of reemployment (public or private) for retirees collecting benefits under the FRS disability provisions. Disability retirees are totally and permanently disabled from all forms of employment. If a disabled retiree returns to work, his/her disability retirement ends. Therefore, the following information pertains to reemployment of all other FRS retirees.

¹ Retirees of the State University System Optional Retirement Plan and the other optional retirement programs or pre-FRS retirement systems are also subject to reemployment restrictions. For information pertaining to the specific reemployment restrictions of these plans, contact the Division of Retirement.

II. DEFINITIONS.

For purposes of this guideline, the following definitions apply:

DROP – The Deferred Retirement Option Program.

De Minimis Account - Investment Plan account containing vested employer contributions and accumulated earnings of \$1,000 or less.

FRS Participating Employer - Any agency, branch, department, institution, university, institution of higher education, or board of the state, or any county agency, branch, department, board, district school board, municipality, metropolitan planning organization, or special district of the state which participates in the Florida Retirement System for the benefit of certain of its employees, or a charter school or charter technical career center that participates as provided in s. 121.051(2)(d), F.S.

Employment Relationship – Any form of employment in either a regularly established position or Other Personal Services (OPS) position within the State Personnel System. Individuals who are bona fide independent contractors or who are covered by a leasing agreement under s. 110.191, F.S., notwithstanding a co-employer relationship with a State Personnel System agency, are not in an employment relationship.

PAR – The Personnel Action Request function in the People First System, by which employee transactions are processed.

Reemployment Restrictions – The number of calendar months during which an FRS retiree who is reemployed (i.e., on any payroll of an FRS participating employer) will be subject to suspension of their monthly FRS benefit.

Termination Requirement – The number of calendar months that an FRS retiree must remain off all payrolls of all FRS participating employers so as not to void retirement.

III. APPLICABLE STATUTORY AND RULE PROVISIONS.

A. Statutory Provisions

Section 121.091(9), F. S.

B. Rule Provisions

State Personnel System – N/A

Pension Plan – Rule 60S-4.012, F.A.C.

Investment Plan – Rule 19-11.009, F.A.C.

IV. SUMMARY OF REEMPLOYMENT PROVISIONS.

Depending on the effective date of retirement or DROP termination date for Pension Plan participants, or the distribution date for Investment Plan participants, the termination requirement and reemployment restrictions will differ between the FRS Pension Plan and the FRS Investment Plan.

FRS PENSION PLAN

If employees participate in the Pension Plan and their retirement date without DROP participation or their DROP termination date is effective **before July 1, 2010:**

- The termination requirement is the first calendar month of retirement without DROP participation or the first calendar month after the DROP termination date. Employment with an FRS participating employer during such calendar month will void the retirement. Additionally, all benefits received, including DROP payouts, must be repaid and a new application must be filed to establish a future retirement date.
- Reemployment restrictions apply during the second through the twelfth calendar months of retirement without DROP participation or the second through the twelfth calendar months after the DROP termination date. If employed by a FRS participating employer during this period the retirement benefit must be suspended unless the position is eligible for one of the reemployment exceptions stipulated in the FRS law. This restriction applies to all employment with an FRS participating employer, including temporary or OPS positions not covered for retirement. The reemployment exceptions are primarily for elected positions and non-state government positions; see the [After You Retire](#) brochure on the "Publications" page of the [Division of Retirement's website](#) for more information.
- There are no reemployment restrictions for employment with FRS participating employers after the first 12 calendar months of retirement without DROP participation or after the first 12 calendar months following the DROP termination date.
- If these retirees are initially reemployed no later than June 30, 2010, they will be eligible to participate in the FRS as renewed members if they fill an FRS-covered position. Upon enrollment in the appropriate plan, they will be eligible for another retirement (second career) benefit after meeting the applicable vesting requirements.
- If these retirees are initially reemployed on or after July 1, 2010, they will not be eligible to participate in the FRS as renewed members, even if they return to an FRS-covered position².

If employees participate in the Pension Plan and their retirement date without DROP participation or their DROP termination date is effective **on or after July 1, 2010:**

- The termination requirement is the first six calendar months of retirement without DROP participation or the first six calendar months after the DROP termination date. Employment with an FRS participating employer during these particular calendar months will void the retirement. Additionally, all benefits received, including DROP payouts, must be repaid and a new application filed to establish a future retirement date.

² The closing of the renewed membership provision (second retirement benefit) applies not only to Pension Plan and Investment Plan retirees, but also retirees of the State University System Optional Retirement Program, the State Community College System Optional Retirement Program, and the Senior Management Service Optional Retirement Program. However, although the employee will not be eligible for renewed membership, the employing agency may still be liable for payment of any unfunded actuarial liability portion of the employer contribution rate and the Retiree Health Insurance Subsidy Program contribution. The Division of Retirement will instruct agencies regarding the proper enrollment and reporting of these individuals.

- Reemployment restrictions apply during the seventh through the twelfth calendar months of retirement without DROP participation or the seventh through the twelfth months after the DROP termination date. If employed by an FRS participating employer during this period the retirement benefit must be suspended. There are no exceptions to reemployment restrictions during this period. See the [After You Retire](#) brochure on the “Publications” page of the [Division of Retirement’s website](#) for more information.
- There are no reemployment restrictions for employment of retirees with FRS participating employers after the first 12 calendar months of retirement without DROP participation or after the first 12 calendar months following the DROP termination date.
- Since these retirees will be initially reemployed on or after July 1, 2010, they will not be eligible to participate in the FRS, even if they return to an FRS-covered position.

FRS INVESTMENT PLAN

If employees participate in the Investment Plan, the requirements to receive a retirement benefit are different from the Pension Plan. Investment Plan participants:

- Must be separated from all employment with FRS participating employers for three calendar months for full access to their retirement account. If the Investment Plan participant meets the requirements for normal retirement under the Pension Plan, he/she can receive a one-time distribution of up to 10 percent from their account after being terminated for one calendar month; further access is restricted until after the third calendar month.
- Are considered retired when they receive a distribution from their Investment Plan account.
- Are subject to a six-calendar month termination requirement beginning with **distributions received during or after July 2009**.
- Are subject to reemployment restrictions during the seventh through twelfth calendar months after receiving their initial distribution:
 - If retired **prior to July 1, 2010**, Investment Plan retirees are eligible for an exception to receive further distributions while working for an FRS participating agency if employed in a position eligible for a reemployment exception. See the [After You Retire](#) brochure on the “[Publications](#)” page of the [Division of Retirement’s website](#) for more information on positions eligible for a reemployment exception and [Working After Retirement](#) and [Investment Plan Reemployment Table](#) on the “[Publications](#)” page under “[Resources](#)” on the MyFRS.com website for more information about reemployment after retirement.
 - If retired **on or after July 2010**, there are no exceptions to reemployment restrictions for Investment Plan retirees while working for an FRS participating employer. Additional distributions cannot be received while working for an FRS participating employer in the seventh through twelfth calendar months after receiving the first distribution. See [Working After Retirement](#) and [Investment Plan](#)

[Reemployment Table](#) on the “[Publications](#)” page under “[Resources](#)” on the MyFRS.com website for more information about reemployment after retirement.

- Are not subject to any reemployment restrictions for employment with FRS participating employers after the first 12 calendar months following receipt of their initial distribution from the FRS Investment Plan.
- Will be re-enrolled in the FRS and become eligible for another retirement benefit (after meeting the applicable vesting requirements) if they are initially reemployed in an FRS-covered position prior to July 1, 2010.
- Will not be eligible to participate in the FRS again even if they fill an FRS-covered position, if they are initially reemployed on or after July 1, 2010.

V. GUIDING PRINCIPLES.

- Each agency is responsible for ensuring that all selected applicants have had their FRS retirement status verified before they are on-boarded as a new hire. There are several steps you can take to ensure the agency does not mistakenly hire retirees who have not yet met their respective termination requirement.

There is a specific document for this purpose, known as the FRS Certification Form (CERT). On this form the employee will state whether they were previously a retirement system participant, which retirement plan, and whether or not they retired from that plan. The Certification Form is retained in the employee’s personnel file. The CERT form is available at: (<http://www.myfrs.com/imageserver/pdf/forms/cert.pdf>).

The information on this form is important to the agency because selected applicants who are retirees and who have not met the specific reemployment restrictions applicable to them in statute will jeopardize their retirement status and, as an FRS participating employer, the agency may be jointly liable for the repayment of retirement benefits received in violation of the FRS reemployment law.

- All employees hired into regular established positions in the People First System will have retirement codes assigned to them, based on how their positions are classified. However, a variety of factors may affect whether or not this initially assigned code is appropriate for the current position incumbent. Therefore, agencies should always verify the retirement code assigned to a new hire, especially if the new hire is a reemployed retiree.
- Investment Plan retirees present some additional challenges that will require careful review because their criteria for retirement are different from that of Pension Plan retirees. For participants of the Investment Plan, a retiree means a former participant who has terminated employment and has taken a distribution from the plan (including a rollover). The only exception is receipt of an authorized mandatory distribution of a de minimis account. This means that previous participants in the Investment Plan may be retired by definition but not realize they are considered to be a retiree. This could occur at any age and at anytime upon their termination from an FRS employer, if they elected to

receive a distribution from the Investment Plan (not counting the exception noted above for participants with de minimis accounts).

The third party administrator for the Investment Plan, Hewitt Associates, can help guide Investment Plan participants regarding their retirement status and any applicable reemployment restrictions. They may be contacted toll free at (866) 446-9377.

VI. FREQUENTLY ASKED QUESTIONS

1. Are there any retirees who are permanently prohibited from reemployment?

Yes. FRS law does not allow individuals who retired under the provisions of “Disability” retirement (in lieu of Normal or Early Service Pension Plan retirement or a distribution from the Investment Plan) to continue collecting FRS disability benefits if they become employed. Consequently, reemployment in any capacity, whether it is with an FRS participating employer or any other public or private employer, will cause FRS disability benefits to cease. Such individuals should contact the Division of Retirement to discuss their options.

2. At what point is it appropriate to inquire about the retirement status of a prospective hire?

Inquiring about the retirement status of individuals who have applied for employment cannot be done as a qualifying question attached to the application or as an interview question because of the appearance that applicants are being screened out based on age, which is a prohibited form of employment discrimination. However, verification of the retirement status of a selected applicant does need to occur prior to the on-boarding process because of the adverse impact on both the agency and the employee if the termination requirement has not been met or, even if it has, on the employee if he/she is not aware that FRS benefits are subject to suspension during a certain portion of their reemployment. Consequently, it is recommended that the CERT be sent to the top candidate or candidates before making an offer of employment. Another option would be for the agency to issue a conditional offer of employment letter to the selected candidate along with the CERT form for verification prior to their first day of employment.

The objective of the CERT is to ensure that individuals who have not met the criteria for reemployment are not hired prematurely, which jeopardizes their retirement benefits and creates a potential liability to the agency. Otherwise, the fact that the selected applicant is a retiree should have no bearing on the selection process. (Of course, anyone hired who is still subject to reemployment restrictions should be advised to immediately contact the Division of Retirement if they are a Pension Plan participant or Hewitt Associates if they are an Investment Plan participant to complete the appropriate forms that will temporarily suspend their benefits, as required by law.)

3. Can the information provided on the FRS Certification Form be verified?

Yes. Whether an individual previously retired from the Pension Plan or took a distribution from the Investment Plan can be verified by logging onto the Employer Page of Online Services under the Division of Retirement Web site “FRS.MyFlorida.com”. This information is under “Distribution Info” page of the “Retiree Info” module and includes instructions to obtain the information by entering the social security number. The screen will display the retiree’s SSN, Name, Agency, Retirement Type, and Retirement Date. If the participant has

previously retired under the Pension Plan, the retirement type will be “PEN”, if retired under the Investment Plan, the retirement type will be “INV”, and if retired under the State University System Optional Retirement Program, the retirement type will be “ORP.” If the participant has not previously retired, you will receive a message indicating that “No records were found.”

4. Where can the agency find information regarding the appropriate retirement code to use for a reemployed retiree?

Agencies should contact the Enrollment Section of the Division of Retirement for assistance. They may be reached at (850) 488-8837 or toll-free at (877) 377-3675.

5. Does OPS employment count as employment with an FRS participating employer?

Yes. The termination requirements and the reemployment restriction period apply to reemployment in either a regular established position or an OPS position.

6. Are there any exceptions to the termination requirement which would allow FRS retirees to return to work with an FRS participating employer within six months of retirement without voiding their retirement?

No. After July 1, 2010, in order to meet the definition of termination under s. 121.021(39)(a), F.S., all FRS retirees must cease all **employment** relationships with an FRS employer for at least six calendar months.

7. What if an FRS retiree desires to perform services for an FRS participating employer as an independent contractor or as an employee of a private leasing or temporary employment company?

Any FRS retiree or FRS participating employer considering these types of contractual arrangements within six months of the effective date of retirement should first consult with the Division of Retirement to ensure it does not constitute an employment relationship that would void the retirement. The Enrollment Section of the Division of Retirement reviews contracts to determine whether an individual will be an officer or employee of the FRS participating employer, pursuant to FRS law. The Enrollment Section can be contacted at (850) 488-8837 or toll free at (877) 377-3675 or e-mailed at: Enrollment@dms.MyFlorida.com.

8. Is an FRS retiree precluded from performing volunteer services during their six month termination period?

Whether or not volunteering during this period is permitted under the law may depend on the nature of the work, as well as other factors the agency may not have considered. Therefore, in all cases of volunteer work by a retiree, it is highly recommended that the agency obtain guidance from the Division of Retirement prior to engaging the retiree.

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