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### **Understanding the Volunteer Firefighter “Return to Service” Law**

*By Rebecca Otto, State Auditor*

Legislative changes during the past several years have clarified how service pensions are calculated for volunteer firefighters who resume active firefighting service after retirement or after a break in service. This article provides a summary of the law and examples of how service credit would be handled for volunteer firefighters under different scenarios.

#### **Changes in the Law**

The legislative changes made during the past several years provide greater flexibility for volunteer fire relief associations to address return-to-service issues and provide greater clarity to those who must calculate service pensions for members returning from breaks in service. The law applies to all breaks in service, including approved leaves of absence, except breaks in service made available by federal or state law (*e.g.*, military or FMLA leave).

The law may assist volunteer fire departments, especially those located in Greater Minnesota, recruit and retain volunteer firefighters. It does this in at least two ways: First, the law eliminates the requirement that members repay any previously received service pension before returning to active service, which was in effect until the law changed in 2009. Second, the law allows the relief association to provide credit for additional service to members who have returned from a break in service, if the bylaws of the relief association permit it.

Some relief associations have expressed a desire to protect their plan from deferred members returning to active service for a short period of time merely to take advantage of benefit increases that occurred while the member was inactive. Such concerns may be

addressed when the association's bylaws are amended, so long as the conditions set out in any amendment are consistent with the law.

The law generally allows relief associations to set in their bylaws a "resumption period," which is a minimum amount of time (separate and apart from the regular vesting period) that the member must serve after returning to service in order to be eligible for additional benefits at the current benefit level. Through their bylaws, relief associations also exercise discretion in setting the length of the resumption period: a relief association wishing to encourage members to resume service may choose a shorter period (e.g., six months), while those wishing to discourage the resumption of service by members who have left may opt for a longer resumption period. Relief associations that pay lump-sum or monthly service pensions are authorized to prohibit, through their bylaws, a member who fails to meet the resumption of service requirement before ceasing firefighting duties again from receiving benefit increases that occurred during a break in service.

The law does, however, contain some mandatory and permitted exemptions to the any resumption period requirement. The law provides an automatic exemption for a member returning to service after an approved leave of absence of one year or less. Additionally, a relief association may, through its bylaws, exempt members from the requirement if they have a break-in-service (e.g., an unapproved leave of absence) that does not exceed one year, provided that the member has not been paid a benefit.

### **How the Law Works**

The "return-to-service" law provides several options so that each relief association has the flexibility to decide for itself within the limits of the law how to handle return to service issues. The content of the bylaws and the decisions of the individual volunteer firefighter determine what benefits will be paid.

### **Example I: Lump Sum Benefit**

Joe is a member of a relief association that pays defined-benefit lump-sum service pensions. He met the vesting requirements, retired, and was paid a lump sum benefit. Joe then returned to service after a 60-day separation. Joe met the vesting requirements again based on the resumption period of service, as required by the bylaws, before ceasing firefighting duties. Joe is now eligible for a separate second lump-sum benefit calculated at the current benefit level. If Joe had not met the vesting requirements for his resumption period of service, no additional lump-sum benefit could be paid.

Jane is also a member of a lump-sum relief association. Jane did not meet the minimum vesting requirement before taking a break in service, and no lump-sum benefit was paid. Jane returned to service and served long enough to meet the minimum vesting requirement based on her combined years of service. The length of her resumption period of service exceeded the resumption period of service requirement in the bylaws. At retirement, Jane's lump-sum payment would be calculated for all years of service at the current benefit level. If the minimum period for resumption of service had not been

met, Jane would be paid a lump sum benefit calculated for all years of service at the current benefit level or, if provided for in the bylaws, at the original benefit level.

### **Example II: Defined Contribution Benefit**

Matt is a member of a relief association that pays defined-contribution service pensions. Matt met the vesting requirements before taking a break in service and was paid a defined contribution lump-sum benefit. Matt then returned to service after a 60-day separation. Matt met the vesting requirements again based on his resumption period of service, as required by the bylaws, before ceasing firefighting duties again. At retirement, Matt is eligible for a lump-sum benefit calculated as a separate second benefit that includes credits allocated to his individual account during the resumption period and deductions for administrative expenses, if applicable. If the vesting requirements for the resumption of service were not met, Matt would not be eligible for any additional benefit payment.

Mary is also a member of a defined-contribution relief association. Mary applied for and received a leave of absence. No benefit was paid when she ceased her firefighting duties. Upon her return to service, Mary met the minimum vesting requirement based on the original and resumption years of service. At retirement, Mary is eligible for a benefit payment that includes credits allocated to her individual account and deductions for administrative expenses, if applicable, less any amounts previously forfeited. Members of defined contribution plans are not subject to a separate resumption period of service requirement.

### **Amending Bylaws to Conform with the Law**

By amending its bylaws, a relief association can choose to allow members who have a break in service to return and resume active membership. The law requires a 60-day period of separation and allows certain bylaw restrictions, such as requiring a minimum period of resumption of service to receive benefit increases.

To allow members to resume active membership after retirement or a break in service, the bylaws must be amended and the amendment must specify the requirements for accruing additional service credit. Relief associations may establish only those conditions that are consistent with the law. If a relief association has previously established in its bylaws conditions on return to service, the relief association should review its bylaws to ensure that the conditions comply with current statutory requirements.

Optional language is provided in the Office of the State Auditor (OSA)'s Sample Bylaw Guides that relief association trustees may use as a reference when reviewing and updating their custom bylaws. The Sample Bylaw Guides are available on the OSA website. Go to [www.auditor.state.mn.us](http://www.auditor.state.mn.us). Choose the "For Local Officials" menu option, and then select "Pension Documents." Choose the "Bylaw Guides" link under the "Documents" heading. The Sample Bylaw Guides are provided in both MS Word and Adobe PDF formats.

In addition, a Statement of Position that provides additional information regarding the “return to service” law, including flow charts showing how service pensions would be calculated for members under different scenarios, is provided on the OSA website. Choose the “For Local Officials” menu option, and then select “Statements of Position.” Choose the “Return to Service for Members of Fire Relief Associations” link under the “Pensions” heading.