



REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

SUITE 500  
525 PARK STREET  
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)  
(651) 296-4755 (Fax)  
[state.auditor@osa.state.mn.us](mailto:state.auditor@osa.state.mn.us) (E-mail)  
1-800-627-3529 (Relay Service)

March-April 2013

Article for *Minnesota Fire Chief*

---

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

By *Rebecca Otto, State Auditor*

Legislative changes in 2009, 2010 and 2012 clarified how service pensions are calculated for volunteer firefighters who resume active firefighting service after retirement or after a break in service. A volunteer firefighter who returns to the same volunteer fire department from which he or she separated from service may now earn additional credit for service, if the break in service was at least 60 days long and if the bylaws of the fire relief association permit it.

### Changes in the Law

The legislative changes made during the past several years provide greater flexibility for volunteer fire relief associations to deal with return-to-service issues and provide greater clarity to those who must calculate service pensions for members returning from breaks in service. The new 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 new 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 new law eliminates the requirement that members repay any previously received service pension before returning to active service, which was in effect until the 2009 law change. 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 new law.

The law provides any member with an approved leave of absence of one year or less an automatic exemption to the minimum period of resumption service requirement in the relief association's bylaws. The minimum period of resumption service requirement is a requirement, separate from the vesting requirement, which a member must meet upon a resumption of service. Relief associations that wish to encourage the resumption of active firefighting service and relief association membership after a break in service may choose a short resumption of service requirement (e.g., six months), while associations wishing to discourage the resumption of service may choose a longer resumption of service requirement. For relief associations that pay lump-sum or monthly service pensions, the bylaws may prohibit a member from receiving benefit increases that occurred during a break in service if the member fails to meet the resumption of service requirement before ceasing firefighting duties again. The law also allows the relief association, through its bylaws, to exempt members with a break in service (e.g., an unapproved leave) not exceeding one year from the resumption service requirement, provided that the member hasn't been paid a benefit.

### **How the Law Works**

The new 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 instead 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.

### **Example III: Monthly Benefit**

Pam is a member of a relief association that pays defined-benefit monthly service pensions. Pam met the vesting requirements when first separating from service and a monthly benefit was paid. Pam returned to service after a 60-day break in service. Upon return to service, Pam's monthly benefit payments may continue if allowed by the bylaws. If the bylaws do not allow for the continuation of monthly benefit payments, Pam's monthly benefit payments must be suspended until she separates from active service. Pam met the vesting requirements again for the resumption period of service, as required by the bylaws, before ceasing firefighting duties again. At retirement, Pam would be eligible for the original monthly benefit, plus an additional monthly benefit calculated at the current benefit level. Alternatively, if the vesting requirements for the resumption of service had not been met, the original monthly benefit payments would continue or resume, and Pam would receive no additional service credit.

Paul is also a member of a monthly relief association. Paul met the vesting requirements before taking a break in service, and no monthly benefit was paid. Paul returned to service and served the minimum period for resumption of service. At retirement, Paul is eligible for monthly payments calculated for all years of service at the current benefit level. If Paul had not met the minimum period for resumption of service, he would be paid a monthly benefit calculated for all years of service at the current benefit level or, if provided for in the bylaws, at the original benefit level.

### **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 new law. If a relief association has previously established in its bylaws conditions on return to service, the relief association should promptly review its bylaws to ensure that the conditions comply with the new statutory requirements.

Optional language is provided in the Office of the State Auditor'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 Office of the State Auditor 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 Office of the State Auditor 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.