

TERMINATION OF EMPLOYMENT RULES FOR PLAN MEMBERS WHO ARE RETIRING OR TAKING A DISTRIBUTION AFTER WORKING FOR A STATE AGENCY SCHOOL PLAN EMPLOYER

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A **certificated employee** is (1) working for a State Agency School Plan Employer, (2) ceasing employment **and** (3) retiring or taking a distribution from retirement.

What plan are they in?

STATE

SCHOOL

The individual **cannot** render any service for the State of Nebraska within 120 days.

The individual **cannot** provide any service, including intermittent voluntary and/or substitute service, to any employer participating in the **School Plan** for 120 days. The terminating employee may render intermittent voluntary and substitute service as described in NRS § 79-902(45)(b)(i) after 120 days have passed.

The individual **cannot** render any service for the State of Nebraska within 120 days.

The individual **cannot** render any service for an employer covered by the **School Plan** within 180 days, except for intermittent voluntary and substitute service as described in NRS § 79-902(45)(b)(i).

SUMMARY OF THE TERMINATION OF EMPLOYMENT RULES

The termination of employment rules existed before LB 700's passage. LB 700 did not change these rules. Rather, LB 700 simply codified some key rules in a more centralized location. Complying with these rules is critical to ensuring the plans' qualified status under the Internal Revenue Code. Below is a summary of some of the key provisions, with notes about the sections that existed before LB 700.

In the **State Plan**, a member terminates employment for retirement purposes only if the person has a bona fide separation of service for at least 120 days and there is no prearranged return to work between the member and any employer covered by the State Plan. There are **NO** exceptions to this 120-day bona fide separation of service period. (NRS § 84-1301(37).) These provisions existed prior to LB 700.

In the **School Plan**, a member terminates employment for retirement purposes only if the person has a bona fide separation of service for at least 180 days and there is no prearranged return to work between the member and any employer covered by the School Plan (including a State Agency School Plan Employer, such as NDE, DHHS, and DCS), except:

- (1) Intermittent voluntary and/or substitute service during the 180 days following the alleged termination date that does not exceed 8 days of intermittent voluntary and/or substitute service in a calendar month.
 - (a) A day of service means any length of service in a single calendar day.
 - (b) Intermittent basis means service provided on a day-to-day basis (See, Laws 2021, LB 147, codified at NRS § 79-902(45)); and
- (2) Service to a State Code Agency School Plan Employer specifically authorized by NRS § 79-920 as described in the **Determining Retirement Plan Enrollment for State Agency School Plan Employers** flowchart. (See, Laws 2022, LB 700, to be codified at NRS § 79-920. Note, as of the revision of this document the Legislature's website has not been updated to reflect the changes found in LB 700. You will need to review the slip law copy of the bill.)

These provisions existed prior to LB 700's passage except for the language in (2), which was modified by LB 700.

In **both** the **State Plan** and **School Plan**, the PERB has statutory authority to determine whether a termination of employment for retirement purposes has occurred. If the PERB determines a termination did not occur, the law requires the member to repay any distributions from retirement, requires both the member and employer to make up missed contributions, and the member's 180-day or 120-day waiting period, as applicable, would restart based on the new termination date. Due to late reporting, the employers may be subject to late fees and interest. (See, NRS §§ 84-1301(37) and 84-1305.02 for the State Plan, and 79-902(45), 79-904.01, and 79-960 for the School Plan, respectively. See also Title 303, Nebraska Administrative Code, Chapter 18.) These provisions existed before LB 700's passage.