

2 AAC 35 is amended by adding a new section to read:

2 AAC 35.227 Bona fide termination of employment. (a) For purposes of this chapter, at retirement, a member's termination from employment is considered valid only if there is no prearrangement between the member and the employer for continued employment in any capacity after the retirement effective date. If any prearrangement to return to work with the same employer exists prior to termination, the member will be deemed to not have a bona fide termination of employment and the member's retirement shall be void.

(b) Unless subsection (f) of this regulation applies, for purposes of a bona fide termination of employment, the following breaks in service requirements shall apply:

(i) A member under age 62 at the time of retirement cannot return to employment in any capacity with the same employer until 6 months has elapsed from the date of termination.

(ii) A member age 62 or older cannot return to employment with the same employer until 60 days have elapsed from the date of termination.

(c) If a retired member under age 59½ returns to employment with the same employer with less than a 6-month break in service, benefit payments shall not be made during the period of reemployment. All benefit payments received prior to the date of cessation of payments and occurring while the member was under age 59½ will be coded, pursuant to Internal Revenue Service requirements, as an early distribution (no known exception) for tax purposes unless another known exception exists. Upon the member's subsequent termination from employment, a member's entitlement to benefit payments will commence the day after the date of the termination. The member will again be required to establish a bona fide termination in accordance with subsection (b) before reemploying again with the same employer.

(d) If a retired member over age 59½, but less than age 62, returns to employment with the same employer with less than a 6-month break, benefit payments shall not be made during the period of reemployment. Upon the member's subsequent termination from employment a member's entitlement to benefit payments will commence the day after the date of the termination. The member will again be required to establish a bona fide termination in accordance with subsection (b) before reemploying again with the same employer.

(e) If a retired member age 62 or older returns to employment with the same employer with less than a 60-day break, benefit payments shall not be made during the period of reemployment. Upon the member's subsequent termination from employment, a member's entitlement to benefit payments will commence the day after the date of the termination. The member will again be required to establish a bona fide termination in accordance with subsection (b) before reemploying again with the same employer.

(f) Regardless of age, retired members who have a prearrangement for reemployment in existence with the same employer prior to the member's retirement will be deemed to not have a valid termination from employment and shall be ineligible for retirement benefits during the period of reemployment. The member will be required to repay to the plan all retirement and health benefits received from the plan plus applicable interest. Interest will be at the plan rate and is effective as of the date of the member's appointment to retirement. Any amounts not repaid to the plan shall continue to accrue interest and shall be subject to collection from the member's retirement benefit. Based upon the voided retirement, during the continued employment, the member will be treated as having not retired for purposes of benefit accrual and shall be subject to all plan provisions for active members.

(g) For purposes of this section, “bona fide termination of employment” shall have the same meaning as “severance of service date” under Treas. Reg. §1.410(a) – 7(b)(2) or as amended.

AUTHORITY: AS 39.35.003 AS 39.35.150 AS 39.35.370 AS 39.35.810
 AS 39.35.678 AS 39.35.115