

June 17, 2016

by: Steve Durden

MEMORANDUM

To: Police and Fire Pension Fund Board of Trustees

**CC: Jason Gabriel, General Counsel
Beth McCague, Interim Executive Director, PFPF
Legal Opinion file**

From: Stephen M. Durden, Chief Assistant General Counsel

Re: Time-Service Credits, General Discussion

Date: June 17, 2016

Discussion

Section 121.107, Ordinance Code. Subsequent to the enactment of Ordinance 2105-304-E a number of questions have arisen as to the obtaining time-service credits. That Ordinance did not make significant modifications to Section 121.107 of the Ordinance Code, and the options that section makes available for the obtaining of time-service credits. Below is the current Section 121.107 with the 2015-304 amendment underlined:

Sec. 121.107. - Credit for broken service, continuous service, partial years transferability, and service as a Florida State Certified Police Officer or Firefighter.

(a) A person who becomes a member of the Police and Fire Pension Fund who is not a retiree of any current or former pension plan of the City of Jacksonville or Duval County, or is not a retiree nor has attained vested status under the Florida Retirement System or the City of Atlantic Beach, shall be entitled to receive time-service credit for any previous period of full-time employment either continuous or broken with the City or its independent agencies, authorities or boards, or the City of Atlantic Beach Fire Department, provided such service has not been used for entitlement to benefits under any other pension system with such entitlement resulting from the attainment of vested status under such other pension system. For purposes of applying these provisions, a member who has previously attained vested status and accordingly has previously secured a legal claim to an entitlement to benefits under another pension plan shall not be entitled to time service credit for such periods of full time employment notwithstanding the fact that the member may have abandoned or rejected such vested status or legal claim to the receipt of future benefits by requesting a refund of contributions or otherwise. However, such general prohibitions shall not preclude a former member of the Fund from purchasing previous vested service with the Fund for which a refund of contributions was previously received and for which the former member has not otherwise used for entitlement to benefits under any other pension system. To be entitled to credit, a member shall make application for credit to the Board at any time prior to retirement. Furthermore, the employee shall pay

into the fund a sum of money equal to the percentage of his current monthly salary required to be contributed by the fund of which he is a member multiplied by the number of months and fractional parts thereof for the entire period of time for which credit is being sought or on such other terms as the Board shall determine.

(b) Notwithstanding anything to the contrary contained in Section (a) above or in Chapter 18615, Laws of Florida, Special Acts of 1937, as amended, a person who becomes a member of the Police and Fire Pension Fund, from the General Employees Pension Fund or the City of Atlantic Beach Fire Pension Fund, without a break in service, shall be entitled to time-service credit for the number of months and fractional parts thereof the member accrued in the member's previous pension fund for computation of pension benefits as stated in the time-service transfer provisions of the enumerated pension law upon transfer of the member's accumulated member and employer contributions from the former fund.

(c) For purposes of applying this Section, "full-time employment" shall mean regular employment as permanent, probationary, provisional, grant or appointed employees involving a regular work week of at least 40 hours. Employment in such eligible positions are generally represented by positions that are included in the maximum authorized number of employees set forth in the annual City budget ordinance. As such, "full-time employment" specifically does not include forms of employment represented by temporary employees (described in 106.404), part-time employees, or seasonal employees. The following types of employment are considered to be in the category of temporary, part-time, or seasonal employees and accordingly, such specifically named categories of employment do not qualify as "full-time employment" for purposes of this Section:

- (1) Court Bailiffs,
- (2) Volunteer Firefighters,
- (3) Auxiliary law enforcement officers,
- (4) Elections workers,
- (5) Student positions and summer help,
- (6) Contract employees, and
- (7) Positions filled through employment agencies.

The above listing is not intended to represent an exhaustive compilation of all of the forms of temporary, part-time, and seasonal employment which are excluded from the definition of "full-time employment."

(d) Any active Member of the Police and Fire Pension Fund who is not a retiree and who has not attained vested status under any other governmental retirement system shall be entitled to purchase time service credit for up to five years of full time employment as a Police Officer under the provisions of F.S. Ch. 943, or as a certified Firefighter under the provisions of F.S. Ch. 633. Notwithstanding the preceding sentence, any active member of the Police and Fire Pension Fund who is not a retiree and seeks to purchase time service credit as a Police Officer under the provisions of F.S. Ch. 943, or as a certified Firefighter under the provisions of F.S. Ch. 633, under this paragraph for service with another government in Duval County, shall be entitled to purchase up to five years of such time service credit provided such service has not been used for entitlement for benefits under any other pension system. To be entitled to pension credit, a Member shall make application to the Board at any time prior to retirement. Furthermore, the employee shall pay into the Pension Fund a sum equal to 20 percent of his or her current monthly salary

multiplied by the number of months (60 months maximum) for which credit is being sought, on such terms as the Board shall determine.

Persons Entitled to Obtain Credits. Subsection(a). This subsection(a) provides that: "A person who becomes a member of the Police and Fire Pension Fund . . . shall be entitled to receive time-service credit for any previous period of full-time employment either continuous or broken with the City or its independent agencies, authorities or boards, or the City of Atlantic Beach Fire Department, . . ." This subsection first creates this category of persons with previous employment with particular governmental agencies, i.e., service with any part of the entire consolidated government, including independent agencies, as well as the City of Atlantic Beach Fire Department. Subsection(a) then removes the entitlement from:

1. "[any] retiree of any current or former pension plan of the City of Jacksonville or Duval County." (emphasis added); and
2. "[any] retiree . . . under the Florida Retirement System or the City of Atlantic Beach;"
3. "[any person who] has attained vested status under the Florida Retirement System or the City of Atlantic Beach."

This subsection(a) also prohibits the entitlement if "such service [within entire consolidated government or the Atlantic Beach Fire Department] has [] been used for entitlement to benefits under any other pension system with such entitlement resulting from the attainment of vested status under such other pension system." This sentence seems to prevent a person who has attained vested status in a pension plan based on service within some part of the entire consolidated government from purchasing this time service after becoming a member of the PFPF. Subsection(b) (discussed below) creates an exception to this prohibition for those who directly transfer from service which earns a retirement within the GEPPF.

The rest of subsection(a) discusses definition of terms and implementation of the provisions. One prerequisite to entitlement to receipt of time-service credit is that the "member shall make application for credit to the Board at any time prior to retirement." In other words, the transfer is not automatic. Second, the member "shall pay into the fund a sum of money equal to the percentage of his current monthly salary required to be contributed by the fund of which he is a member multiplied by the number of months and fractional parts thereof for the entire period of time for which credit is being sought or on such other terms as the Board shall determine."

In sum, subsection(a) permits members who once worked for some portion of the entire consolidated government (plus those who worked for the Atlantic Beach Fire Department) to receive time-service credit for any and all service as employee of the entire consolidated government with a few provisos. (1) The member applies. (2) The member pays the amount required by the ordinance or such amount determined by the Board. (3) The member is not a retiree of a consolidated City pension plan. (4) The member is not retiree under FRS or the Atlantic Beach pension plan. (5) The member is not vested under FRS or

the Atlantic Beach pension plan. (6) Finally, “a member who has previously attained vested status and accordingly has previously secured a legal claim to an entitlement to benefits under another pension plan shall not be entitled to time service credit for such periods of full time employment notwithstanding the fact that the member may have abandoned or rejected such vested status or legal claim to the receipt of future benefits by requesting a refund of contributions or otherwise.”

Subsection(b) modification of subsection(a). Subsection(b) modifies the provisions of subsection(a), stating:

Notwithstanding anything to the contrary contained in Section (a) above or in Chapter 18615, Laws of Florida, Special Acts of 1937, as amended, a person who becomes a member of the Police and Fire Pension Fund, from the General Employees Pension Fund or the City of Atlantic Beach Fire Pension Fund, without a break in service, shall be entitled to time-service credit for the number of months and fractional parts thereof the member accrued in the member's previous pension fund for computation of pension benefits as stated in the time-service transfer provisions of the enumerated pension law upon transfer of the member's accumulated member and employer contributions from the former fund.

This subsection(b) creates a subclass of persons who once worked for some part of the Consolidated City of Jacksonville (or Atlantic Beach). Persons who (1) become a member of the PFPF and (2) who were members of the GEPF (or the Atlantic Beach Fire Pension Fund) and (3) became a member of the JFPF without a break in service are (4) entitled to time-service credit for all credited service in the prior pension fund (5) “upon transfer of the member's accumulated member and employer contributions from the former fund.”

Oversimplified, this provision allows direct and complete transfer of time-service from the GEPF (or Atlantic Beach) into the PFPF, so long as the condition of money transfer is met. This transfer may or may not be automatic or mandatory, or both. *See, Section 120.204(i), Ordinance Code*, which states: “In the event that a member transfers from a City department or agency which has its own retirement plan to a position covered in this Plan, without a break in service, the member shall be required to become a member of this Plan. The member shall receive credited service for the completed months and years served in the prior plan for computation of pension benefits.” Undeniably, however, the new member transferee has the option to transfer all time-service with the GEPF (or the Atlantic Beach pension).

The open questions concern whether transferees are Group I or Group II members if they transfer from City employment.

Subsection(d) of Section 121.107 creates a new category of persons entitled to purchase time service credit, similar to the right granted to the persons in subsection(a):

Any active Member . . . who has not attained vested status under any other governmental retirement system shall be entitled to purchase time service credit for up to five years of full time employment as a Police Officer under the provisions of F.S. Ch. 943, or as a certified Firefighter under the provisions of F.S. Ch. 633.

Subsection(d) first creates two groups entitled to purchase up to 5 years of service. These two groups are (1) police officers and (2) firefighters who worked for "any other governmental unit . . . as a Police Officer under the provisions of F.S. Ch. 943, or as a certified Firefighter under the provisions of F.S. Ch. 633." First, this requires having worked for a "governmental unit." Second, this requires that the police officer or firefighter have worked under the provisions of Chapter 943 or 633 of the Florida Statutes. By necessity this must be limited to a member who worked as a police officer or a firefighter for either the State or a local government within the state will be entitled to purchase not more than five years of prior service with the State or a local government within the State, subject to the limitations within Subsection(d). If governmental unit were not limited to the State and local governments within the state, then any person who happened to have a personal certification under Chapter 943 or 633 and also worked for any government in the world, in any capacity. Quite clearly, the reference to Chapters 943 and 633 restrict that section to the State or to local governments within the State, the governments subject to regulation by the Florida Legislature.

Besides restricting the governments that provide the qualifying service, subsection(d) further limits this entitlement to purchase, by prohibiting purchase by a member (not a retiree member) who "has . . . attained vested status under any other governmental retirement system."

Ordinance 2015-304-E adopted a modification of the subsection(d) limitation. This amendment provides that a police officer or firefighter who had "service with another government in Duval County, shall be entitled to purchase up to five years of such time service credit provided such service has not been used for entitlement for benefits under any other pension system." In other words, if a member previously served as a police officer or firefighter for a local government within Duval County, that member may purchase up to five years of time service credit, *even if* that person has vested *but only if* "such service has not been used for entitlement for benefits under any other pension system."

Oversimplified, the time service rules are as follows: (1) Those members who become members of the PFPF directly from service with an agency of the entire consolidated government within the GEPF may transfer all of that time into the PFPF. (2) Those members who become members of the PFPF with a break in service from service with an agency of the entire consolidated government within the GEPF, or with an agency of the entire consolidated government, but not within GEPF, may transfer all of that time into the PFPF, so long as the member "has [not] previously secured a legal claim to an entitlement to benefits under another pension plan." (3) Police and firefighters with previous employment as a police officer or firefighter the State government or a local government within the state may purchase up to five years of time-service, so long as they were not

vested in that pension plan. (4) Police and firefighters with previous employment as a police officer or firefighter a local government within Duval County, i.e., the Beaches and Baldwin, may purchase up to five years of time-service, even if they were vested in that pension plan, so long as the purchased time-service is not also used for entitlement for benefits under another plan.

Conclusion.

If I can be of further assistance or you have further questions, please do not hesitate to contact me.