

ATTACHMENT A



What is a bona fide termination when rehiring retirees or former employees?

If you're thinking about rehiring a retiree or former employee, there's one question you must answer before you bring them back on board: Was their termination a bona fide termination?

There's no easy answer to this question. A termination of employment is **not** bona fide:

If there has not been a complete termination and severance of the employer-employee relationship. Merely because the separation of service between employer and employee is greater than one calendar month.

If, at the time of termination, there is an expectation, understanding or agreement that the termination is temporary or that the person will be rehired in the future. This applies even if the position that employee will occupy:

- Is different from his or her current position
- Pays more or less than the current position
- Is in a different department
- Requires different hours (for example, going full time to part time, or vice versa)
- Is an independent contractor position that has the individual providing the same services they provided while an employee

This also applies to employees rehired on a *pro re nata* or "as needed" basis. If the rehired person is returning to basically the same job he or she had before, then the termination isn't bona fide.

Elected officials are subject to these bona fide termination rules, too. A change from a common-law employee to an elected official is not by itself a termination of employment. Each elected official is an employee of the county or district for the purpose of participating in TCDRS.

Without a bona fide termination of employment, rehiring a retiree or former employee jeopardizes the qualified status of your TCDRS plan. This can mean an IRS audit, which could result in the IRS revoking your qualified plan status. In addition to losing the pre-tax benefit, a disqualified plan may be fined for back taxes, penalties and interest.

For more details about rehiring retirees and former employees, please contact your county attorney or district legal counsel. If you have any questions, please feel free to contact TCDRS' legal staff at 800-823-7782.