

Effective 5/3/2023

49-11-1401 Forfeiture of retirement benefits for employees for employment related offense convictions -- Notifications -- Investigations -- Appeals.

(1) As used in this section:

- (a) "Convicted" means a conviction by plea or by verdict, including a plea of guilty or a plea of no contest that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, regardless of whether the charge was, or is, subsequently reduced in accordance with the plea agreement or reduced or dismissed in accordance with the plea agreement or the plea in abeyance agreement.
- (b) "Employee" means a member of a system or plan administered by the board.
- (c)
 - (i) "Employment related offense" means a felony committed during employment or the term of an elected or appointed office with a participating employer that is:
 - (A) during the performance of the employee's duties;
 - (B) within the scope of the employee's employment; or
 - (C) under color of the employee's authority.
 - (ii) "Employment related offense" does not include any federal offense for conduct that is lawful under Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(2)

- (a) Notwithstanding any other provision of this title, an employee shall forfeit accrual of service credit, employer retirement related contributions, including employer contributions to the employer sponsored defined contribution plans, or other retirement related benefits from a system or plan under this title in accordance with this section.
- (b) The forfeiture of retirement related benefits under Subsection (2)(a) does not include the employee's contribution to a defined contribution plan.

(3) An employee shall forfeit the benefits described under Subsection (2)(a):

- (a) if the employee is convicted of an employment related offense;
- (b) beginning on the day on which the employment related offense occurred; and
- (c) until the employee is either:
 - (i) re-elected or reappointed to office; or
 - (ii)
 - (A) terminated from the position for which the employee was found to have committed an employment related offense; and
 - (B) rehired or hired as an employee who is eligible to be a member of a Utah state retirement system or plan.

(4) The employee's participating employer shall:

- (a) immediately notify the office:
 - (i) if an employee is charged with an offense that is or may be an employment related offense under this section; and
 - (ii) if the employee described in Subsection (4)(a)(i) is acquitted of the offense that is or may be an employment related offense under this section; and
- (b) if the employee is convicted of an offense that may be an employment related offense:
 - (i) conduct an investigation, which may rely on the conviction, to determine:
 - (A) whether the conviction is for an employment related offense; and
 - (B) the date on which the employment related offense was initially committed; and
 - (ii) after the period of time for an appeal by an employee under Subsection (5), immediately notify the office of the employer's determination under this Subsection (4)(b).

- (5) An employee may appeal the employee's participating employer's determination under Subsection (4)(b) in accordance with the participating employer's procedures for appealing agency action, including Title 63G, Chapter 4, Administrative Procedures Act, if applicable.
- (6)
 - (a) Notwithstanding Subsection (4), a district attorney, a county attorney, the attorney general's office, or the state auditor may notify the office and the employee's participating employer if an employee is charged with an offense that is or may be an employment related offense under this section.
 - (b) If the employee's participating employer receives a notification under Subsection (6)(a), the participating employer shall immediately report to the entity that provided the notification under Subsection (6)(a):
 - (i) if the employee is acquitted of the offense;
 - (ii) if the employee is convicted of an offense that may be an employment related offense; and
 - (iii) when the participating employer has concluded the participating employer's duties under this section if the employee is convicted, including conducting an investigation, making a determination under Subsection (4)(b) that the conviction was for an employment related offense, and notifying the office under Subsection (7).
 - (c) The notifying entity under Subsection (6)(a) may assist the employee's participating employer with the investigation and determination described under Subsection (4)(b).
- (7) Upon receiving a notification from a participating employer that the participating employer has made a determination under Subsection (4)(b) that the conviction was for an employment related offense, the office shall immediately forfeit any service credit, employer retirement related contributions, including employer contributions to the employer sponsored contribution plans, or other retirement related benefits accrued by or made for the benefit of the employee, beginning on the date of the initial employment related offense determined under Subsection (4)(b).
- (8) This section applies to an employee who is convicted on or after the effective date of this act for an employment related offense.
- (9) The board may make rules to implement this section.
- (10) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section shall be given effect without the invalid provision or application.

Amended by Chapter 328, 2023 General Session