

The State of South Carolina



Office of the Attorney General

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September 15, 1988

The Honorable Nell W. Smith
Member, South Carolina State Senate
P. O. Box 142
Columbia, South Carolina 29202

RE: Interpretation of §9-1-1140 South Carolina
Code of Laws, as amended

Dear Senator Smith:

You have requested an opinion of this Office interpreting §9-1-1140 of the South Carolina Code of Laws, as amended, dealing, in part, with the purchase of service credit for a period of absence from work due to pregnancy.

You specifically asked whether an individual is required to return to service between pregnancies which are two years apart. The second paragraph of §9-1-1140 is the portion of the statute dealing with maternity credit. There have been no Appellate Court decisions, prior Attorney General's opinions or long-standing South Carolina Retirement System interpretations of this portion of §9-1-1140, thus, my analysis is limited to a reading of the applicable portions of the statute itself.

The maximum amount of service credit that may be established is one year for each pregnancy, not to exceed three years. There is no requirement in the statute that an individual return to service between pregnancies. The only requirements of the statute for an employee to establish service credit for maternity leave are that:

- 1) The employee is absent from work on maternity leave (though this is not specifically stated, it is implicit in the language of the statute);
- 2) the employee pays the full actuarial cost of the service credit as determined by the State Budget and Control Board, and in keeping with the payment requirement of the statute; and

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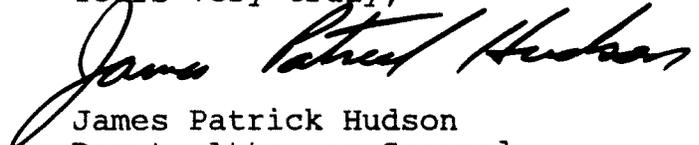
- 3) the employee not be absent from work for a period greater than two years for each pregnancy.

It would be a factual question to be determined by the appropriate agency as to whether all three of these requirements are present such that the employee would be entitled to service credit.

You have indicated that the employee in question was absent from work for four years during which time she had two children, two years apart. Assuming that the appropriate agency made a finding that the employee was absent from work on maternity leave for a period not greater than two years for each pregnancy, the employee would be able to purchase two years of service credit, one year for each pregnancy.

I hope this information has been helpful to you. If I can provide further assistance or clarification, please do not hesitate to contact me.

Yours very truly,


James Patrick Hudson
Deputy Attorney General

JPH/srcj

cc: The Honorable Nell W. Smith
Member, South Carolina State Senate
P. O. Box 68
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REVIEWED AND APPROVED BY:


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