



REBECCA OTTO
STATE AUDITOR

STATE OF MINNESOTA

OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@osa.state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

Statement of Position Volunteer Fire Relief Member's Return to Service

Legislative changes in 2009, 2010, 2012 and 2013 altered the way resumption of active service after retirement or a break in service is handled. A volunteer firefighter who returns to the same volunteer fire department from which he or she separated from service may now earn additional credit for service if the break in service was at least 60 days long and if the bylaws of the fire relief association permit it.

Changes in the Law

The legislative changes provide greater flexibility for volunteer fire relief associations dealing with return-to-service issues and provide greater clarity to those who must calculate service pensions for members returning from breaks in service. The law applies to all breaks in service, including approved leaves of absence, except that the resumption service requirements do not apply to leaves of absence made available by federal statute, such as the Family Medical Leave Act and the Uniformed Services Employment and Reemployment Rights Act, and do not apply to leaves of absence made available by state statute, such as the Parental Leave Act, the Leave for Organ Donations Act, the Leave for Civil Air Patrol Service Act, the Leave for Immediate Family Members of Military Personnel Injured or Killed in Active Service Act, or the Protection of Jurors' Employment Act.¹

The law may assist volunteer fire departments, especially those located in Greater Minnesota, recruit and retain volunteer firefighters. It does this in at least two ways: First, the law eliminates the requirement that members repay any previously-received service pension before returning to active service.² Second, the law allows the relief association to provide credit for additional service to members who have returned from a break in service, if the bylaws of the relief association permit it.³

¹ See Minn. Stat. § 424A.01, subd. 6.

² The 2009 law repeals Minn. Stat. § 424A.02, subd. 9b, which provided that, if a retired volunteer firefighter returns to active service in the same volunteer fire department, "no additional service pension amount is payable to the person, no additional service is creditable to the person and the person shall repay any previously received service pension."

³ Minn. Stat. § 424A.01, subd. 6 (return to active firefighting after break in service).

Reviewed: October 2015
Revised: July 2014

2009-2005

This Statement of Position is not legal advice and is subject to revision.

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Some relief associations have expressed a desire to protect their plan from deferred members returning to active service for a short period of time to take advantage of benefit increases that occurred while the member was inactive. Such concerns may be addressed when the association's bylaws are amended, so long as the conditions set out in any amendment are consistent with the law.

Current law provides any member with an approved leave of absence, not exceeding one year, an automatic exemption to the minimum period of resumption service requirement in the relief association's bylaws. This is a requirement, separate from the vesting requirement, that a member must meet upon a resumption of service. A relief association defines the resumption of service requirement in its bylaws. Relief associations that wish to encourage the resumption of active firefighting service and relief association membership after a break in service may choose a short resumption of service requirement (*e.g.*, six months), while associations wishing to discourage the resumption of service may choose a longer resumption of service requirement. For relief associations that pay lump-sum or monthly service pensions, the bylaws may prohibit a member from receiving benefit increases that occurred during a break in service if the member fails to meet the resumption of service requirement before ceasing firefighting duties again. The law also allows the relief association, through its bylaws, to exempt members with a break in service (*e.g.*, an unapproved leave) not exceeding one year from the resumption service requirement, provided that the member has not been paid a benefit.

How the Law Works

The law provides several options so that each relief association has the flexibility to decide for itself within the limits of the law how to handle return to service issues. The content of the bylaws and the decisions of the individual volunteer firefighter determine what benefits will be paid.

For lump-sum service pensions, for example, a member met the vesting requirements before the break in service and was paid a lump sum benefit.⁴ The member then returned to service after a 60-day separation. The member met the vesting requirements again based on the resumption period of service, as required by the bylaws, before ceasing firefighting duties. The member may then be paid a lump sum calculated as a separate second benefit at the current benefit level. If the vesting requirements for the resumption of service were not met, no additional lump sum benefit can be paid.

If a lump-sum benefit had not been paid, the member had met the minimum vesting requirement, and had served the minimum period for resumption of service, the lump-sum payment would be calculated for all years of service at the current benefit level. If the minimum period for resumption of service was not met, the member would be paid a lump sum calculated for all years of service at the current benefit level or, if provided for in the bylaws, at the original benefit level.

For defined contribution service pensions, for example, a member met the vesting

⁴ See Exhibits A and B.

requirements before the break in service and was paid a defined contribution lump-sum benefit.⁵ The member then returned to service after a 60-day separation. The member met the vesting requirements again based on the resumption period of service, as required by the bylaws, before ceasing firefighting duties again. The member may then be paid a lump-sum calculated as a separate second benefit that includes credits allocated to the member's individual account during the resumption period and deductions for administrative expenses, if applicable. If the vesting requirements for the resumption of service were not met, no additional lump-sum benefit would be paid.

If a defined contribution lump-sum benefit had not been paid, the member had met the minimum vesting requirement based on the original and resumption years of service, the lump-sum payment would be calculated to include credits allocated to the member's individual account during the original and resumption periods and deductions for administrative expenses, if applicable, less any amounts previously forfeited. Members of defined contribution plans are not subject to a separate resumption period of service requirement.

Amounts forfeited before a resumption of active service and membership remain forfeited and may not be reinstated upon the resumption of active service and membership.

For monthly service pensions, as another example, a member met the vesting requirements when first separating from service and a monthly benefit was paid.⁶ The member then returned to service after a 60-day break in service. Upon return to service, the monthly benefit payments may continue if allowed by the bylaws. If the bylaws do not allow for the continuation of monthly benefit payments, the payments must be suspended until the member separates from active service. The member met the vesting requirements again for the resumption period of service, as required by the bylaws, before ceasing firefighting duties again. The member would then be paid the original monthly benefit, plus an additional monthly benefit calculated at the current benefit level. Alternatively, if the vesting requirements for the resumption of service had not been met, the original monthly benefit payments would continue or resume, with no additional service credit.

If the monthly benefit had not been paid, the member had met the vesting requirements before the break in service, and served the minimum period for resumption of service, the monthly payment would be calculated for all years of service at the current benefit level. If the minimum period for resumption of service had not been met, the member would be paid a monthly benefit calculated for all years of service at the current benefit level or, if provided for in the bylaws, at the original benefit level.

⁵ See Exhibits C and D.

⁶ See Exhibits E and F.

Amending Bylaws to Conform with the Law

By amending its bylaws, a relief association can choose to allow members who have had a break in service to return and resume active membership. The law requires a 60-day period of separation and allows certain bylaw restrictions, such as requiring a minimum period of resumption of service to receive benefit increases.

To allow members to resume active membership after retirement or a break in service, the bylaws must be amended and the amendment must specify the requirements for accruing additional service credit. Relief associations may establish only those conditions that are consistent with the law. If a relief association has previously established in its bylaws conditions on return to service, the relief association should promptly review its bylaws to ensure that the conditions comply with current law.



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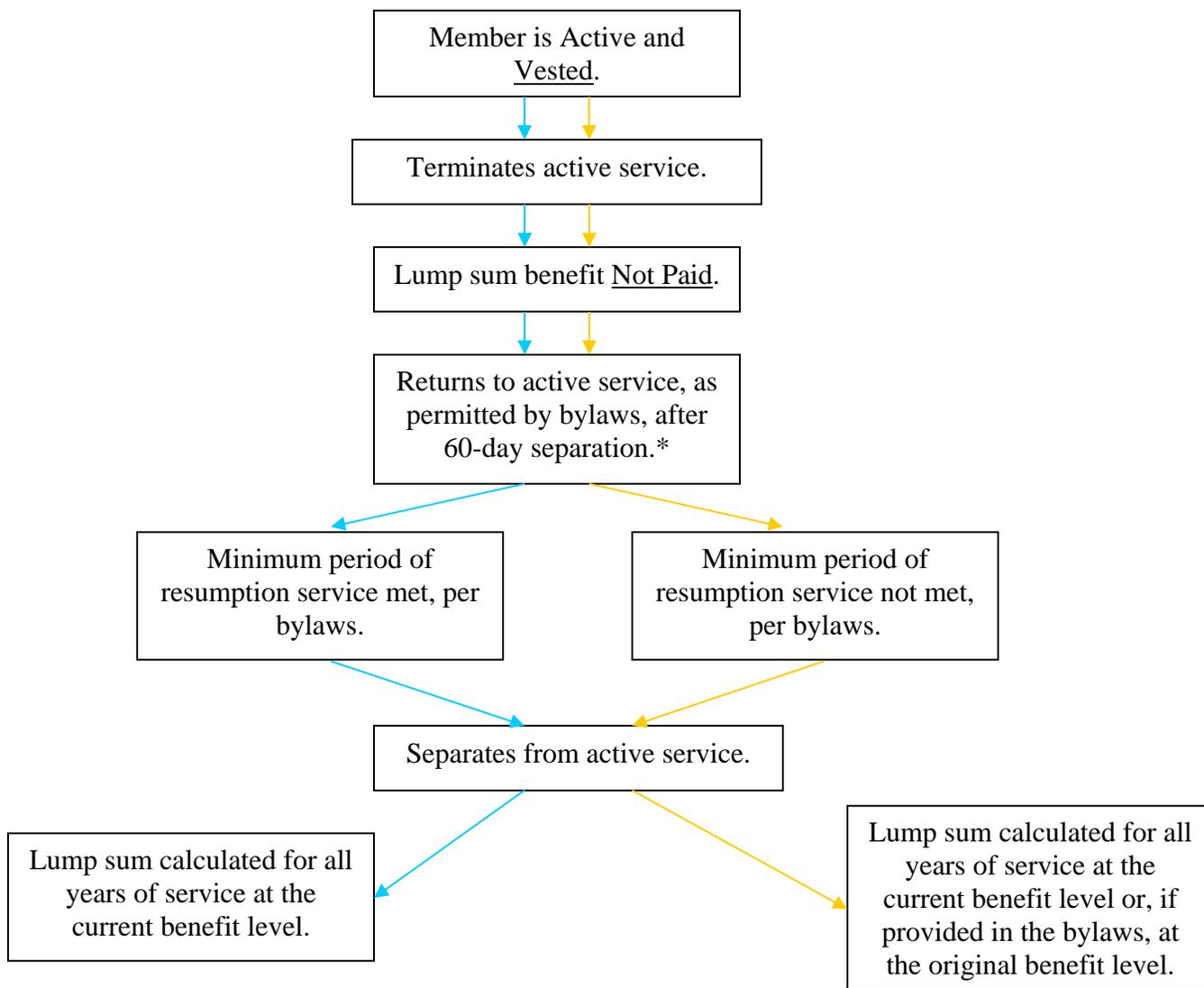
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Exhibit A Return to Service Flow Chart Lump Sum Benefit Recipient, Benefit Not Yet Paid

Lump Sum Service Pensions



* Members with an approved leave of absence not exceeding one year are not subject to a minimum period of resumption service upon their return to service. Members with a break in service, other than an approved leave, that did not exceed one year and who have not been paid a benefit may be exempt from the minimum period of resumption service requirement by the relief association bylaws.



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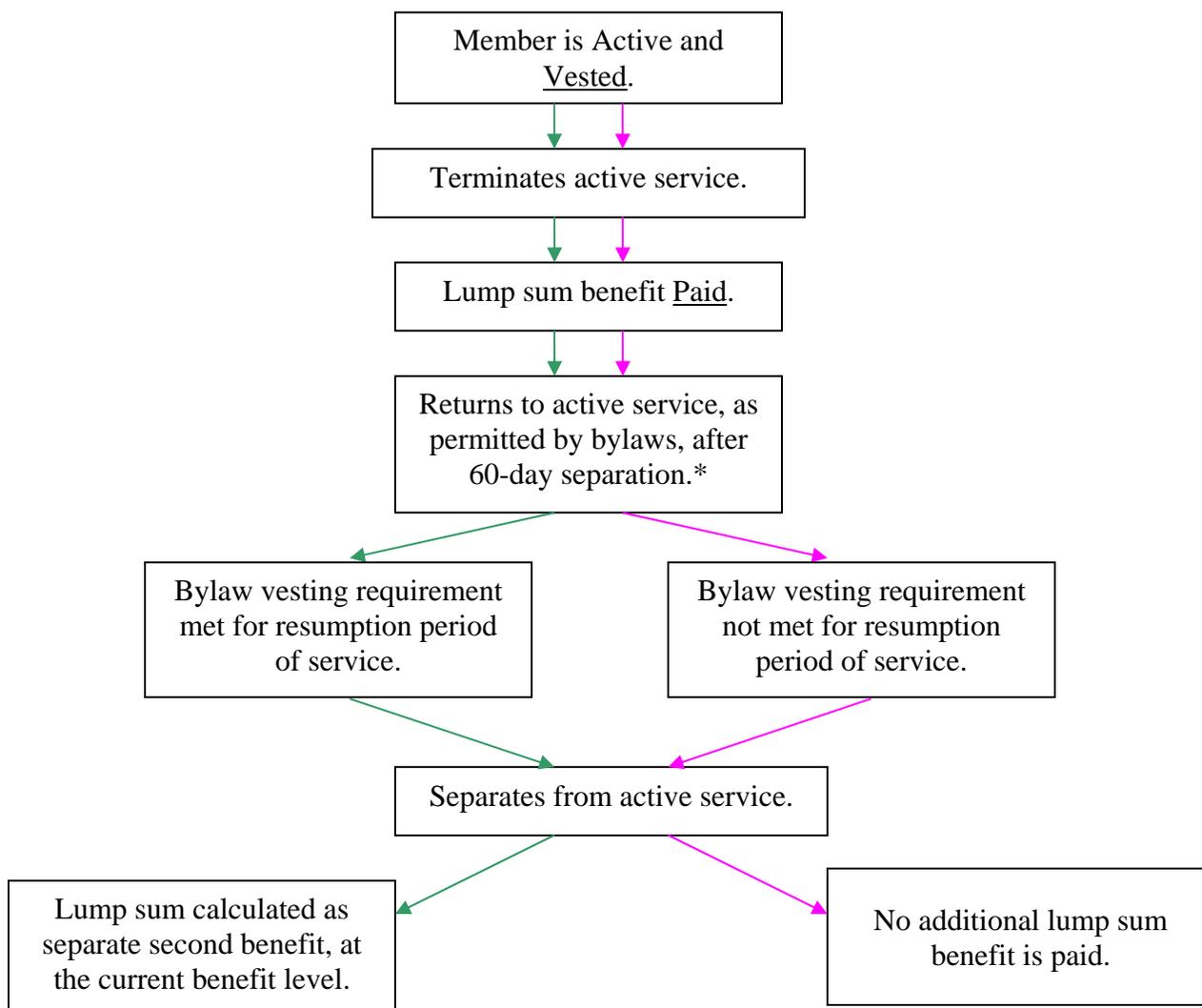
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Exhibit B Return to Service Flow Chart Lump Sum Benefit Recipient, Benefit Has Been Paid

Lump Sum Service Pensions



* Members with an approved leave of absence not exceeding one year are not subject to a minimum period of resumption service upon their return to service. Members with a break in service, other than an approved leave, that did not exceed one year and who have not been paid a benefit may be exempt from the minimum period of resumption service requirement by the relief association bylaws.



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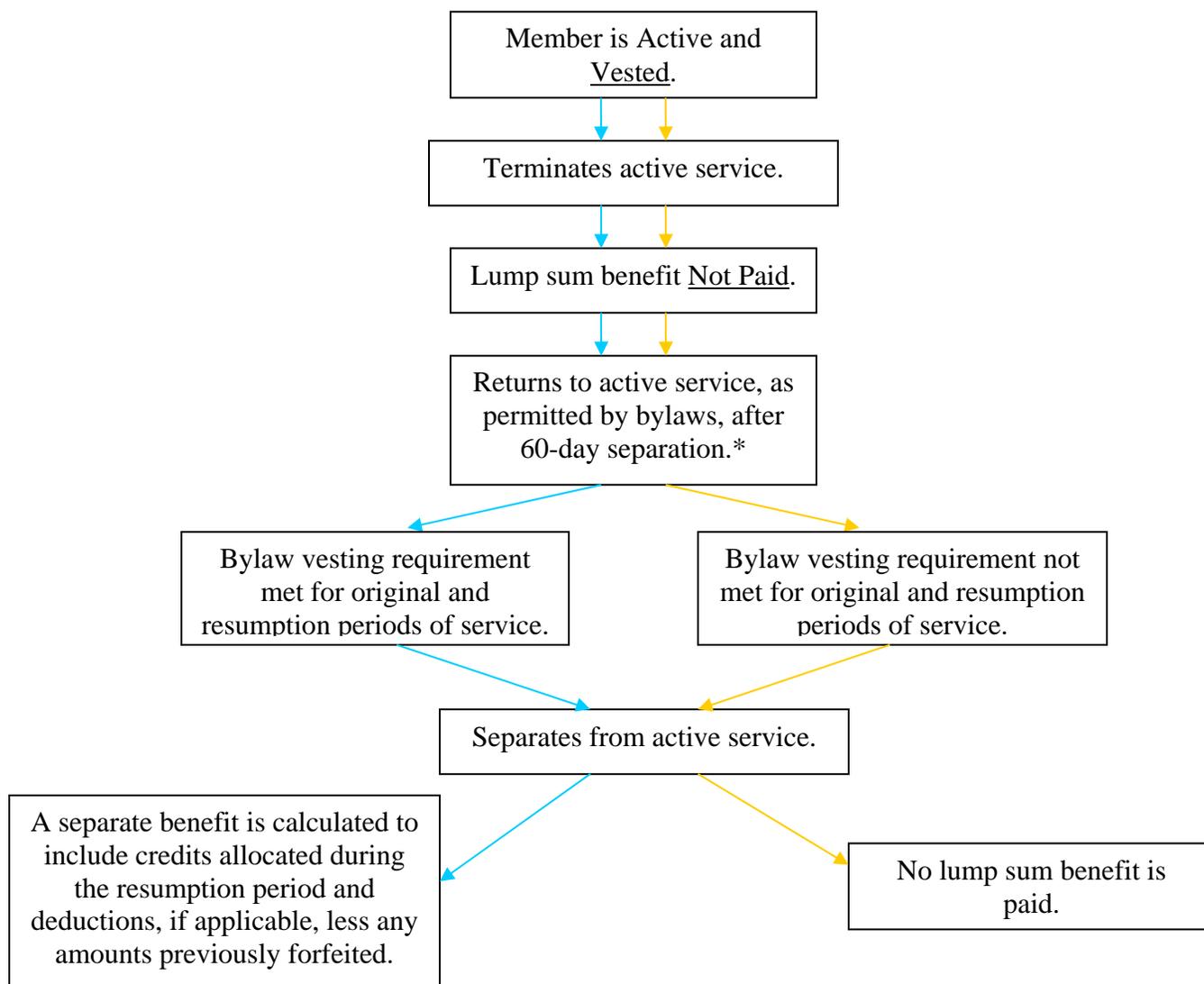
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Exhibit C Return to Service Flow Chart Defined Contribution Benefit Recipient, Benefit Not Yet Paid

Defined Contribution Lump Sum Service Pensions



* Members with an approved leave of absence not exceeding one year are not subject to a minimum period of resumption service upon their return to service. Members with a break in service, other than an approved leave, that did not exceed one year and who have not been paid a benefit may be exempt from the minimum period of resumption service requirement by the relief association bylaws.



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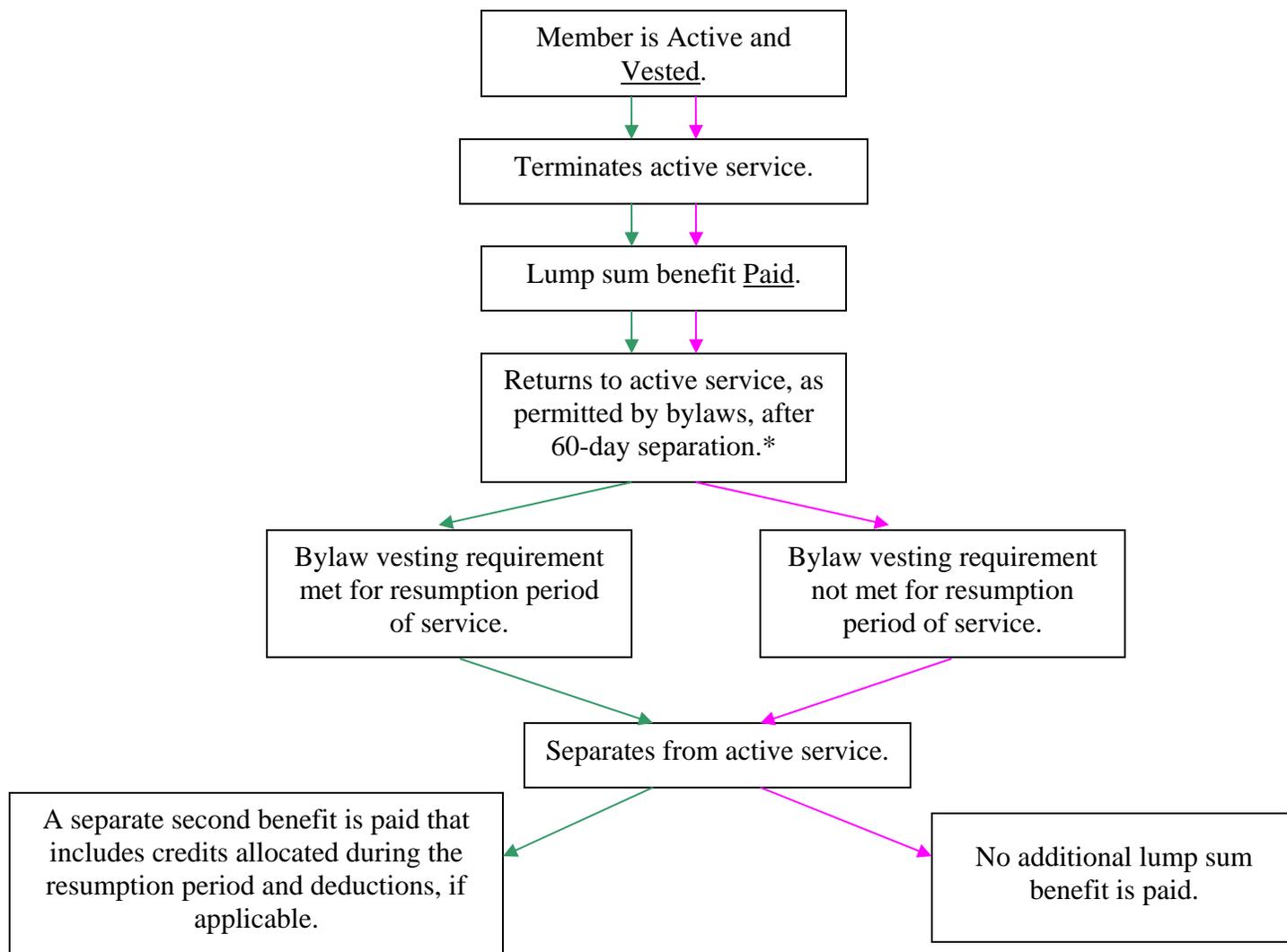
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Exhibit D Return to Service Flow Chart Defined Contribution Benefit Recipient, Benefit Has Been Paid

Defined Contribution Lump Sum Service Pensions



* Members with an approved leave of absence not exceeding one year are not subject to a minimum period of resumption service upon their return to service. Members with a break in service, other than an approved leave, that did not exceed one year and who have not been paid a benefit may be exempt from the minimum period of resumption service requirement by the relief association bylaws.



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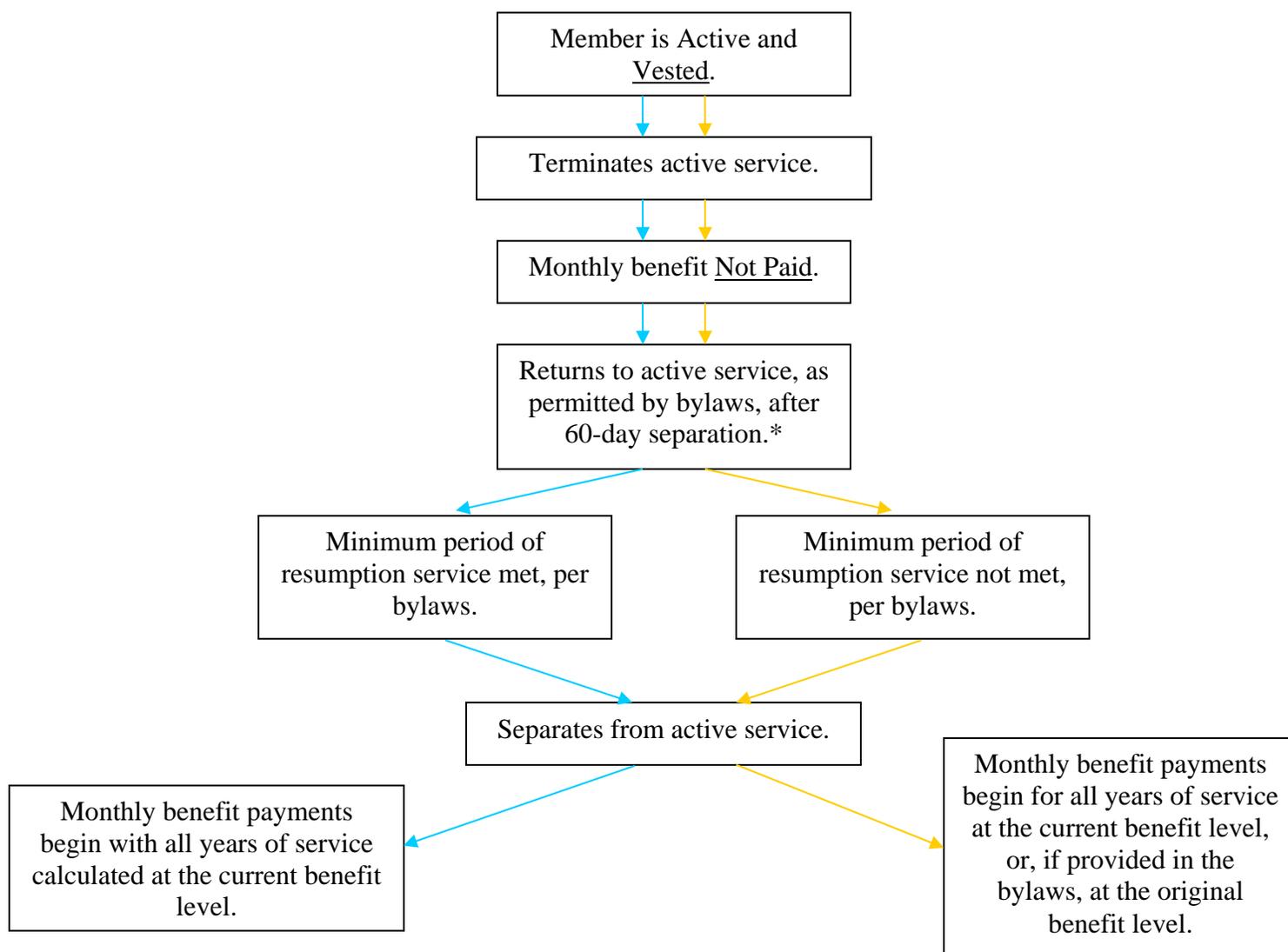
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Exhibit E Return to Service Flow Chart Monthly Benefit Recipient, Benefit Not Yet Paid

Monthly Service Pensions



* Members with an approved leave of absence not exceeding one year are not subject to a minimum period of resumption service upon their return to service. Members with a break in service, other than an approved leave, that did not exceed one year and who have not been paid a benefit may be exempt from the minimum period of resumption service requirement by the relief association bylaws.



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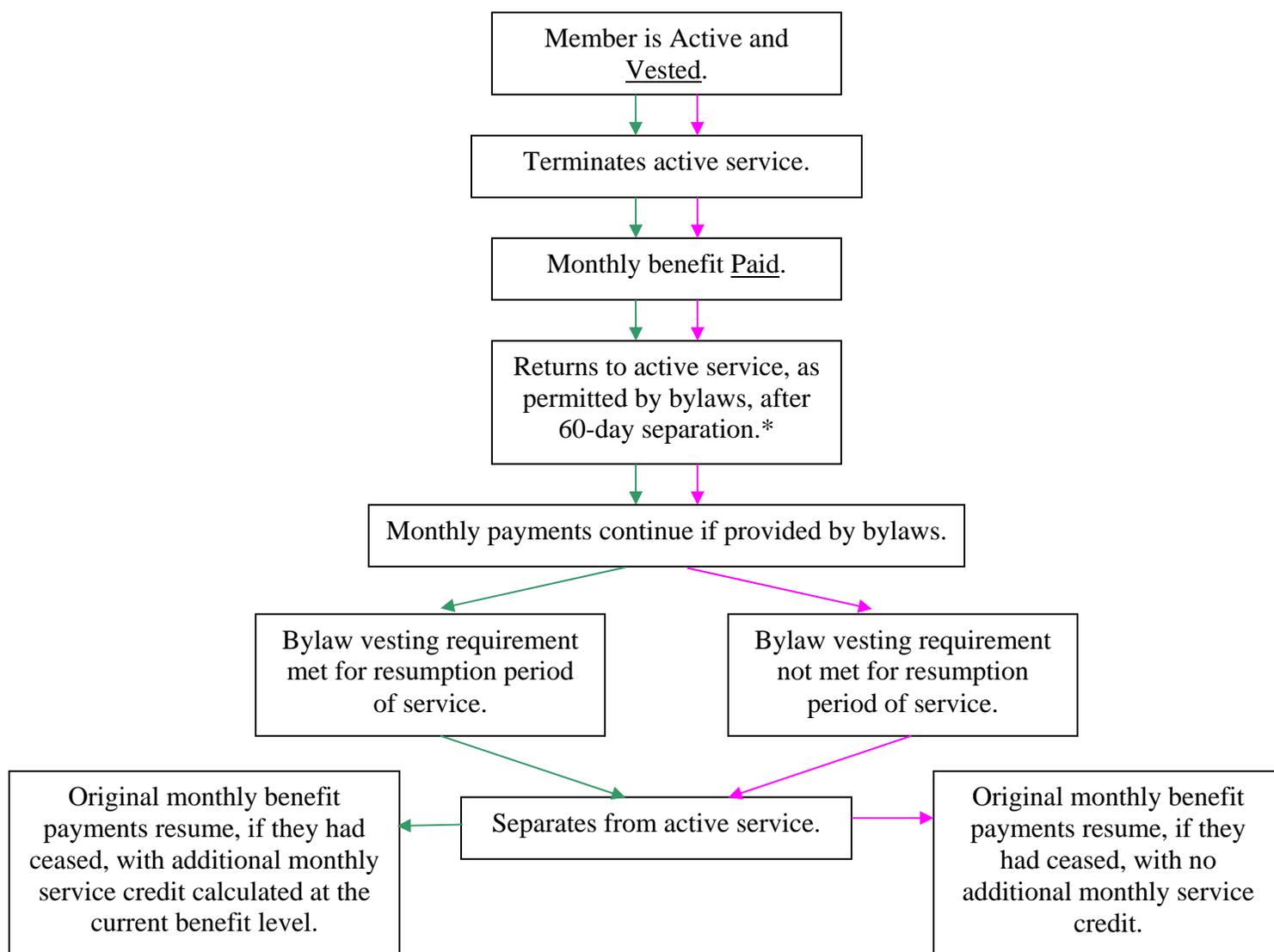
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Exhibit F Return to Service Flow Chart Monthly Benefit Recipient, Benefits Being Paid

Monthly Service Pensions



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