



# KPPA

Kentucky Public Pensions Authority

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Public Pension Oversight Board

February 23, 2022

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Rebecca Adkins, Deputy Executive Director

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Per KRS 61.5991, Nonhazardous employers in KERS who contributed to the system in FY 2019-20 except county attorneys and entities governed by Chapter 212 are required to report persons which no contributions were paid by the employer to the system.

| AGENCY CLASSIFICATION        | NUMBER OF AGENCIES AFFECTED |
|------------------------------|-----------------------------|
| HEALTH DEPARTMENTS           | 60                          |
| NON-P1 STATE AGENCIES        | 24                          |
| REGIONAL MENTAL HEALTH UNITS | 10                          |
| UNIVERSITIES                 | 6                           |
| <b>TOTAL</b>                 | <b>100</b>                  |

\*KRS 61.591 (7) states the following entities are exempt from the reporting requirements and from receiving a subsidy to assist in paying employer contribution rates: Council on State Governments (CSG), Kentucky Educational Television (KET) Foundation, Association of Commonwealth's Attorneys, Kentucky High School Athletic Association (KHSAA), Municipal Power Association of Kentucky, Kentucky Office of Bar Admissions, Nursing Home Ombudsman, Kentucky Association of Regional Programs (KARP), Kentucky Association of Sexual Assault Programs.



KERS Nonhazardous Employers shall provide information to KPPA on all independent contractors and/or leased employees not directly employed by the KERS nonhazardous employer

KERS Nonhazardous Employers shall also provide information on any persons employed directly who meet the definition of a regular full-time employee who are not being reported to the system

### EXCEPTIONS TO REPORTING:

- Original contracts entered into prior to January 1, 2021 for services provided via an independent contractor, leased employee, or other employment arrangement other than direct employment.
- Contracts for professional services that have not historically been provided by employees of the KERS nonhazardous employer.



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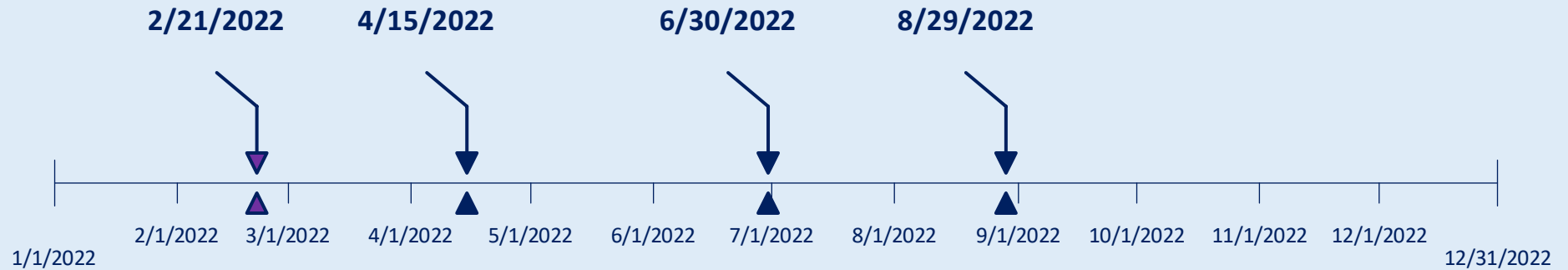
## KRS 61.510 (21) Definition of Regular Full-Time

Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:

- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;
- (b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;
- (c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months and are nonrenewable;
- (d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty; and
- (e) Interim positions which are positions established for a one-time or recurring need not to exceed nine (9) months



## HB 8 Contract Employee Reporting Timeline



|             |  |
|-------------|--|
| February 21 | Notification sent to affected employers outlining the process. Includes Form 6576, Annual Employer- Certification of Non-Contributing Service Providers                                  |
| April 15    | Deadline for Form 6756 and any required documentation (e.g. contracts) to be submitted to KPPA for Non-Contribution employees  |
| June 30     | Deadline for Form 6756 and any required documentation for employees hired after the form deadline (April 16-June 30)   |
| August 29   | KPPA sends list (60 days from FYE) of Non-Contributing employees which meet the criteria of the Common Law Factors applied by the IRS to LRC and the Office of the State Budget Director |

- Employer Information

Employer Name, Employer Code, Fiscal Year, Questions regarding communications to the employer from KPPA or KRS

- Non-Contributing Service Providers

Employer certification that employer has no direct employees who meet the definition of a regular full-time employee pursuant to KRS 61.510(2) or KRS 61.675

- Independent Contractors

Employer certification of the utilization of independent contractors and space to list previous contracts, parties of the contract, date(s) of contract and location of of contract copy; and,

Number of independent contractors and space for brief description of professional services provided by the independent contractor

[Print Form](#)

### Annual Employer Certification of Non-Contributing Service Providers

## Employer Information

Employer:

Employer Code:

This form is being completed for the 20  - 20  Fiscal Year.

Has the employer submitted a form already for this fiscal year? ☐ Yes ☐ No

Has the employer received one or more communication(s) from the Kentucky Public Pensions Authority (KPPA) or, prior to April 1, 2021, the Kentucky Retirement Systems concerning its independent contractors or leased employees? ☐ Yes ☐ No

☐ If yes, check to indicate that the relevant communication(s) are submitted with this form.

## Non-Contributing Service Providers (check only if the following statement is true)

The employer has/will not utilize any independent contractors, third party companies, staffing companies, other non-participating entities, or other persons who will provide services to the employer through any other arrangement and has no direct employees who meet the definition of a regular full-time employee pursuant to KRS 61.510(21) and who are not being reported to the KPPA in accordance with KRS 61.675: ☐ Check only if this statement is true.

### Independent Contractors

The employer has utilized or will utilize independent contractors to provide services for the employer: ☐ Yes ☐ No

If yes, how many persons have or will be utilized as independent contractors:

☐ Check to indicate that the relevant contract(s) and other documentation are submitted with this form.  
(see Instructions for other required documentation)

If one or more independent contractors are used during this fiscal year and the employer is not submitting information regarding the independent contract(s) on this form because the relevant original contract, excluding any renewal period, was entered into prior to January 1, 2021, identify each original contract by listing (a) the parties to the contract, (b) the date the contract was entered, (c) the date range the contract is in effect, and (d) where a copy of the contract can be found (use additional pages if necessary):

If the employer is not submitting information on one or more independent contractors used during this fiscal year because one or more of these independent contractors provide professional services that have not historically been provided by employees of the employer, provide the following:

How many independent contractors used during this fiscal year is the employer not providing information for because the independent contractor(s) are providing professional services that have not historically been provided by employees of the employer?

Provide a brief explanation of how the professional services provided by the independent contractor(s) differ from professional services historically provided by employees of the employer (use additional pages if necessary):



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Form 6756, pg. 2

## Annual Employer Certification of Non-Contributing Service Providers

- Third Party, Staffing Company, or Other Non-Participating Entity

Employer certification of using a third party, staffing company or other non-participating entity to provide services and a list of those entities and number of staff provided

List of contracts prior to January 1, 2021, parties to the contract, date the contract was entered, date contract was in effect and a location of contract copy

If the employer is not submitting information for employees performing services through one of the aforementioned entities because these persons provided professional services that have not historically been provided by the employer, provide the number of staff meeting this criteria and an explanation of the services provided and how that differs from employees of the employer.

| Third Party, Staffing Company, or Other Non-Participating Entity  |   |
|---|---|
| The employer has utilized or will utilize a third party, staffing company, or other non-participating entity to provide services for the employer: <input type="checkbox"/> Yes <input type="checkbox"/> No   |   |
| If yes, complete the following:   |   |
| Name all third party, staffing companies, or other non-participating entities and number of persons provided by each company: (Use additional pages as necessary to provide the names of all companies and the number of employees from each company provided to employer.)   |   |
| Name of company:  | Number of persons provided to employer: |
| Name of company:  | Number of persons provided to employer: |
| Name of company:  | Number of persons provided to employer: |
| <input type="checkbox"/> Check to indicate that the relevant contract(s) and other documentation are submitted with this form. (see Instructions for other required documentation)  |   |
| If one or more third party, staffing company, or other non-participating entity are used during this fiscal year and information on such an entity is not being submitted on this form because the relevant original contract, excluding any renewal period, was entered into prior to January 1, 2021, identify each original contract by listing (a) the parties to the contract, (b) the date the contract was entered, (c) the date range the contract is in effect, and (d) where a copy of the contract can be found (use additional pages if necessary): |   |
|   |   |
| If the employer is <u>not</u> submitting information on one or more persons performing services through a third party, staffing company, or other non-participating entity during this fiscal year because one or more of these persons provide professional services that have <u>not</u> historically been provided by employees of the employer, provide the following:  |   |
| How many such persons used during this fiscal year is the employer not providing information for because the person(s) are providing professional services that have not historically been provided by employees of the employer?   |   |
| Provide a brief explanation of how the professional services performed by the person(s) providing services through a third party, staffing company, or other non-participating entity differ from professional services historically provided by employees of the employer (use additional pages if necessary):   |   |
|   |   |





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Form 6756, pg. 3

## Annual Employer Certification of Non-Contributing Service Providers

- Person(s) Employer Does Not Recognize as an Employee, Independent Contractor, or Lease Employee

Employer certification of using employees not recognized as an employee but provides services to the employer

List of company/business name the person(s) provide services for the participating employer and number of persons provided by each

List of contracts prior to January 1, 2021, parties to the contract, date the contract was entered, date contract was in effect and a location of contract copy

If the employer is not submitting information for employees performing services through one of the aforementioned entities because these persons provided professional services that have not historically been provided by the employer, provide the number of staff meeting this criteria and an explanation of the services provided and how that differs from employees of the employer.

- Not Reported to KPPA in Accordance with KRS 61.675

| Person(s) Employer Does Not Recognize as an Employee, Independent Contractor, or Leased Employee   |
|--|
| The employer has utilized or will utilize one or more persons who the employer does not recognize as an employee, independent contractor, or leased employee (through a third party, staffing company, or non-participating entity), but who provide services for the employer: <input type="checkbox"/> Yes <input type="checkbox"/> No   |
| If yes, complete the following:<br>Provide the number of persons who the employer does not recognize as an employee, independent contractor, or leased employee (through a third party, staffing company, or non-participating entity), but who provides services for the employer: <input type="text"/>   |
| Name each company or business name (if available) through which these persons provide services for the participating employer and the number of persons provided by each company or business to the employer. (Use additional pages as necessary to provide the names of all companies and the number of employees from each company provided to employer.)  |
| Name of company: <input type="text"/> Number of persons provided to employer: <input type="text"/>   |
| Name of company: <input type="text"/> Number of persons provided to employer: <input type="text"/>   |
| Name of company: <input type="text"/> Number of persons provided to employer: <input type="text"/>   |
| <input type="checkbox"/> Check to indicate that the relevant contract(s) and other documentation are submitted with this form.<br>(see Instructions for other required documentation)  |
| If one or more persons who the employer does not recognize as an employee, independent contractor, or leased employee are used during this fiscal year and are not included on this form because the relevant original contract, excluding any renewal period, was entered into prior to January 1, 2021, identify each original contract by listing (a) the parties to the contract, (b) the date the contract was entered, (c) the date range the contract is in effect, and (d) where a copy of the contract can be found (use additional pages if necessary):<br><div style="border: 1px solid black; height: 100px; width: 100%;"></div>                              |
| If the employer is <u>not</u> submitting information on one or more persons the employer does not recognize as an employee, independent contractor, or leased employee who is providing services to the employer during this fiscal year because one or more of these persons provide professional services that have <u>not</u> historically been provided by employees of the employer, provide the following:<br>How many such persons used during this fiscal year is the employer not providing information for because the person(s) are providing professional services that have not historically been provided by employees of the employer? <input type="text"/> |
| Provide a brief explanation of how the professional services performed by the person(s) the employer does not recognize as an employee, independent contractor, or leased employee differ from professional services historically provided by employees of the employer (use additional pages if necessary):<br><div style="border: 1px solid black; height: 100px; width: 100%;"></div>   |
| <b>Not Reported to the KPPA in accordance with KRS 61.675</b><br>The employer did not report to the KPPA in accordance with KRS 61.675 persons employed directly by the employer who meet the definition of a regular full-time employee in accordance with KRS 61.510(21): <input type="checkbox"/> Yes <input type="checkbox"/> No   |
| <input type="checkbox"/> If yes, check to indicate that a Form 4225, Verification of Employment, was submitted for each such person with this form.  |





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Form 6756, pg. 4

## Annual Employer Certification of Non-Contributing Service Providers

- Employer Certification

Employer participates in a KERS nonhazardous plan;

KPPA may require additional information to process the form;

Employer shall submit an updated form if an independent contractor or leased employee is hired;

KRS, responsible for the governance of KERS, and the KPPA have authority to determine if an employee should be reported to KERS as a regular full-time employee;

Falsifying records or failure to submit data may result in negative consequences;

The employer represented may be liable for expenses incurred if found to possess control of money or records “used or to be used by KPPA”;

Providing false statements, reports, or representation is subject to penalty in accordance with KRS 523.100

### Employer Certification

As the agency head, appointing authority, or authorized designee of a local or district health department governed by KRS Chapter 212, state supported university or community college, mental health/mental retardation board, domestic violence shelter, rape crisis center, child advocacy center, or another nonhazardous employer that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System (KERS) as provided by KRS 61.522, by signing this form I acknowledge the following:

- The employer participates in the KERS nonhazardous plan.
- On behalf of KERS, the Kentucky Public Pensions Authority (KPPA) may require additional information in order to process this form.
- If the employer subsequently uses or hires one or more independent contractors, leased employees (through a third party, staffing company, or other non-participating entity), or via any other arrangement during the fiscal year covered by this form, then the employer shall submit an updated form and documentation.
- The Kentucky Retirement Systems, responsible for the governance of KERS, and the KPPA have the exclusive authority to determine whether a person who has not been reported in KERS should be reported to in KERS as a regular full-time employee. Any relevant KERS nonhazardous employer shall be required to report the employee on or after July 1, 2021, and pay employer contributions after July 1, 2021.
- The KPPA has full power by statute to conduct an audit to ensure compliance and accuracy of the data required by this form. Upon finding in an audit that a KERS nonhazardous employer failed to file contributions for one or more employees in a regular full-time position required to participate in KERS pursuant to KRS 61.675 and/or KRS 61.5991, interest may be added to the contributions owed by the KERS nonhazardous employer.
- If the KPPA determines the participating employer for which I am signing on behalf of has knowingly falsified data or fails to submit information required the employer may face negative consequences, including, but not limited to ineligibility for any future appropriations or subsidies from the state to assist in paying employer contributions to the KPPA and/or back paying any appropriation or subsidies received from the state to assist in paying employer contributions.
- Effective June 28, 2021, the employer I am representing and I may be liable for civil payments, legal fees, and costs if found to possess or otherwise have custody or control of money or records “used or to be used by the [KPPA] or the systems it administers and fails to deliver or delivers less than all of the money [or] records” to the KPPA.
- I have full understanding that any person who provides a false statement, report, or representation is subject to penalty in accordance with KRS 523.100.

Printed Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



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## Employee versus Independent Contractor

- “Historically been provided by an employee” – KPPA will review contracts from prior fiscal years to ensure “employee” is a term utilized correctly for the KRS 61.5991 exception in reporting
- KPPA reviews and approves/denies contracts annually for employers to determine if the reporting and contribution ratio is correct
- For fiscal years 2023 and after, the General Assembly intends to provide subsidies to the KERS nonhazardous employers subject to these requirements that meet the required ratio of employees to independent contractors/leased employees/etc.

Beyond furnishing the aforementioned information, KPPA is not involved in this process

- How an employer designates the work or position is not binding
- KPPA will utilize the Common Law Factors applied by the IRS



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## COMMON LAW FACTORS APPLIED BY THE IRS INDEPENDENT CONTRACTOR OR EMPLOYEE EVALUATION

|                                   |  |
|-----------------------------------|--|
| 1. Level of Instruction           | 11. Requirements for Reports               |
| 2. Amount of Training             | 12. Method of Payment                      |
| 3. Degree of Business Integration | 13. Payment of Business or Travel Expenses |
| 4. Extent of Personal Services    | 14. Provision of Tools and Materials       |
| 5. Control of Assistants          | 15. Investment in Facilities               |
| 6. Continuity of Relationship     | 16. Realization of Profit or Loss          |
| 7. Flexibility of Schedule        | 17. Work for Multiple Companies            |
| 8. Demands for Full-Time Work     | 18. Availability to Public                 |
| 9. Need for On-Site Services      | 19. Control over Discharge                 |
| 10. Sequence of Work              | 20. Right of Termination                   |