

61.523 Cessation of participation by employer in retirement system and establishment of a governmental plan -- Effects of on employees and employers -- No legislative determination that employer ceasing to participate is a "governmental agency."

The following shall apply if an employer ceases participation in the Kentucky Employees Retirement System or the County Employees Retirement System under KRS 61.522 and, after ceasing participation, establishes an alternative retirement plan as required by KRS 61.522, which is a governmental plan within the meaning of 26 U.S.C. sec. 414(d) that provides for mandatory employee contributions:

- (1) Each employee of the employer participating in the governmental plan shall contribute a fixed percentage of compensation for each pay period he or she receives compensation. The fixed percentage of compensation provided by this subsection shall:
 - (a) Be established in a written plan document by the board of directors or other governing body of the employer for specific classes of employees;
 - (b) Comply with subsections (2) to (4) of this section; and
 - (c) Only be changed by the board of directors or other governing body of the employer prospectively, provided the written plan document established by paragraph (a) of this subsection is amended to reflect the change;
- (2) The employer shall cause to be deducted from the compensation of each employee the contribution rate specified by subsection (1) of this section;
- (3) The deductions provided by this section shall be made notwithstanding that the minimum compensation provided by law for any employee shall be reduced thereby. Every employee shall be deemed to consent and agree to the deductions made as provided by this section, and payment of salary or compensation less these deductions shall be a full and complete discharge of all claims for services rendered by the person during the period covered by such payment, except as to benefits payable under the plans established by the employer that are covered by this section;
- (4) Each employer shall, solely for the purpose of compliance with 26 U.S.C. sec. 414(h), pick up the employee contributions required by this section and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010, except for purposes of the Federal Insurance Contributions Act. The picked-up employee contribution shall:
 - (a) Be in lieu of employee contributions;
 - (b) Not be included as gross income of the employee until such time as the contributions are distributed or made available to the employee; and
 - (c) Be paid by the employer from the same source of funds which is used to pay compensation to the employee.

The employee shall not be permitted to opt-out of the picked-up employee contributions, to receive the picked-up employee contributions directly instead of having them paid by the employer to the retirement plan, or to have any other cash or deferred election right to the picked-up contributions within the meaning of 26

C.F.R. sec. 1.401(k)-1(a)(3); and

- (5) The provisions of this section shall not be construed to be a determination or opinion by the Kentucky General Assembly as to whether or not an employer who ceases participation in the Kentucky Employees Retirement System or the County Employees Retirement System under KRS 61.522 is a governmental agency for purposes of establishing a governmental plan within the meaning of 26 U.S.C. sec. 414(d).

Effective: April 27, 2018

History: Amended 2018 Ky. Acts ch. 171, sec. 67, effective April 14, 2018; and ch. 207, sec. 67, effective April 27, 2018. -- Created 2016 Ky. Acts ch. 113, sec. 1, effective July 15, 2016.

Legislative Research Commission Note (4/27/2018). This statute was amended by 2018 Ky. Acts chs. 171 and 207, which do not appear to be in conflict and have been codified together.