

**61.5991 Quasi-governmental employers participating in KERS -- Required reports
-- Audits -- Legislative intent regarding future appropriations to subsidize
retirement costs -- Non-core services independent contractor.**

Except as otherwise provided by this section, the following shall apply to nonhazardous employers in the Kentucky Employees Retirement System, who contributed to the system in fiscal year 2019-2020 except in the case of county attorneys, who are local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, county attorneys, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, or any other agency that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522:

- (1) (a) Each employer, except for county attorneys, shall report to the Authority for each fiscal year occurring on or after July 1, 2021, the following persons for which no employer contributions were paid by the employer to the system during the fiscal year for services provided to the employer:
 1. Except as provided by paragraph (b)3. of this subsection, persons employed as an independent contractor, a leased employee, or via any other employment arrangement as determined by the Authority, who if employed directly by the employer would qualify as a regular full-time employee in accordance with KRS 61.510(21); and
 2. Persons employed directly by the employer who meet the definition of a regular full-time employee in accordance with KRS 61.510(21), who are not being reported to the system in accordance with KRS 61.675.
- (b) The reporting required by this paragraph shall:
 1. Be reported in a format, detail, and frequency as determined solely by the Authority;
 2. Except as provided by subparagraph 3. of this paragraph, include persons providing services to the employer as an independent contractor, a leased employee, or via any other employment arrangement as determined by the Authority, and those services have historically been provided or are currently being provided by employees eligible to participate in the system through the employer; and
 3. Exclude:
 - a. Contracts for professional services that have not historically been provided by employees of the employer;
 - b. Any contracts entered into prior to January 1, 2021, with a person or company to provide services as an independent contractor, a leased employee, or other employment arrangement as determined by the Authority, but only for the duration of the original contract, excluding any renewal periods, and only for those services and persons included in the original contract, except as provided in subdivision c. of this subparagraph; and
 - c. Contracts providing services through a non-core services independent contractor as defined in subsection (9) of this section,

regardless of whether or not the contract was initiated before January 1, 2021, or on or after January 1, 2021.

- (c) In any case of doubt, the Authority shall determine whether data should be reported on a specific person providing services to the employer and the Authority may by promulgation of administrative regulation provide guidance on which persons should be included for reporting purposes;
- (2) (a) Notwithstanding any other provision of statute to the contrary, the Authority shall:
 - 1. Have full power, including any authority under KRS 61.685, to audit an employer who is subject to the provisions of this section to ensure compliance and accuracy of the data required to be reported by the employer in accordance with this section; and
 - 2. Perform audits on a percentage of employers who are subject to the reporting requirements of this subsection, as determined by the board, for the purpose of ensuring that all eligible employees are being reported and contributions are being paid in accordance with KRS 61.510 to 61.705. The system shall have full power and authority, including any authority and power granted under KRS 61.675 and 61.685, to accomplish the audits required by this subparagraph. An audit time frame and schedule shall be adopted by the board, made available to impacted employers, and reported to the Public Pension Oversight Board.
 - (b) If the Authority determines an employer has knowingly falsified data required to be reported under this section:
 - 1. The Authority shall indicate in the annual report submitted in accordance with subsection (3) of this section that the employer has knowingly falsified data and shall include a brief summary of the reasons for the Authority's determination;
 - 2. The employer shall no longer be eligible to receive any future appropriations or subsidies from the state to assist in paying employer contributions to the system; and
 - 3. The employer shall be required to pay back to the state any appropriations or subsidies provided in the biennial executive branch budget that were used to directly assist the employer in paying employer contributions to the system on or after July 1, 2021.
 - (c) If an employer fails to submit the information required by this section or does not comply with requests from the Authority regarding this subsection and subsection (1) of this section to verify or audit the employer's information:
 - 1. The Authority shall indicate in the annual report submitted in accordance with subsection (3) of this section that the employer is noncompliant with the Authority's requests and shall include a brief summary of the reasons for the Authority's determination; and
 - 2. The employer may lose eligibility to receive any future appropriations or subsidies from the state to assist in paying employer contributions to the

system, except that if an employer does not comply with requests from the Authority pursuant to an audit conducted in accordance with paragraph (a)2. of this subsection the employer shall lose eligibility to receive any future appropriations or subsidies from the state to assist in paying employer contributions to the system until such time as the employer complies with the audit;

- (3) The Authority shall within sixty (60) days following the close of each fiscal year occurring on or after July 1, 2021, determine and report the following to the state budget director's office and the Legislative Research Commission for each employer subject to this section, except for county attorneys:
 - (a) The number of regular full-time employees of the employer who were reported to the system during the prior fiscal year for which contributions were reported in accordance with KRS 61.675;
 - (b) The number of persons providing services to the employer under subsection (1) of this section during the prior fiscal year who were not reported to the system and for which no contributions were reported;
 - (c) A percentage computed by dividing the number of employees reported in paragraph (a) of this subsection by the combined sum of the number of employees and persons reported in paragraphs (a) and (b) of this subsection and multiplying by one hundred (100); and
 - (d) The information required by subsection (2) of this section for any employer who has been determined by the Authority to have knowingly falsified data or is noncompliant in submitting the data required by this section to the Authority;
- (4) It is the intent of the General Assembly in fiscal years occurring on or after July 1, 2021, to provide appropriations for county attorneys for retirement costs in the Kentucky Employees Retirement System that is equal to the difference between the dollar value of actual contributions paid by the employer in fiscal year 2019-2020 to the system and the dollar value of contributions projected to be paid by the employer to the system in fiscal year 2021-2022;
- (5) For fiscal year 2021-2022, it is the intent of the General Assembly to provide a subsidy towards the retirement costs of employers covered by this section, except for county attorneys who are provided a subsidy by subsection (4) of this section, that is equal to the difference between the dollar value of actual contributions paid by the employer to the system in fiscal year 2019-2020 and the dollar value of contributions projected to be paid by the employer to the system in fiscal year 2021-2022;
- (6) It is the intent of the General Assembly that for fiscal years occurring on or after July 1, 2022:
 - (a) To provide a subsidy towards the retirement costs of each employer subject to this section, except for county attorneys who are provided a subsidy by subsection (4) of this section, who has made efforts to increase or maintain the number of employees reported to the system. Specifically, it is the intent of the General Assembly to provide subsidies only to those employers who have a percentage of employees reported to the system as specified by subsection

(3)(c) of this section, equal to or greater than:

1. Sixty percent (60%) for any subsidies provided in fiscal years occurring on or after July 1, 2022, to June 30, 2024; and
2. Eighty percent (80%) for any subsidies provided in fiscal years occurring on or after July 1, 2024.

Eligibility for a subsidy provided in each fiscal year of the budget shall be based upon the most recent percentage of employees reported by the Authority;

(b) For those employers eligible for a subsidy under paragraph (a) of this subsection, to provide a subsidy that is equal to the dollar value of the subsidy provided to the employer in fiscal year 2021-2022 multiplied by the following percentage:

1. For local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, and any other employer subject to this section that has taxing or fee authority:
 - a. Ninety percent (90%) in fiscal year 2022-2023;
 - b. Eighty percent (80%) in fiscal year 2023-2024;
 - c. Seventy percent (70%) in fiscal year 2024-2025;
 - d. Sixty percent (60%) in fiscal year 2025-2026; and
 - e. Fifty percent (50%) in fiscal years occurring on or after July 1, 2026; and
2. For any other employer who does not have taxing or fee authority:
 - a. Ninety percent (90%) in fiscal years 2022-2024; and
 - b. Seventy-five percent (75%) in fiscal years occurring on or after July 1, 2024; and

(c) The subsidy provided by this subsection shall be adjusted to reflect the assignment of liabilities based upon the appeal process in KRS 61.565(1)(d)5.;

(7) The Council on State Governments (CSG), the Kentucky Educational Television (KET) Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs (KARP), and the Kentucky Association of Sexual Assault Programs are, notwithstanding the provisions of subsections (1) to (6) of this section, exempt from the reporting requirements and from receiving a subsidy to assist in paying employer contribution rates;

(8) The provisions of this section shall not obligate the General Assembly to provide any specific level of subsidy to assist in paying employer contributions of any employer covered by this section, and employers shall be responsible for any and all future retirement contributions payable by the employer regardless of the actual amount of subsidy included in future executive branch budgets; and

(9) For purposes of this section, "non-core services independent contractor" means a

company or business that is not owned or controlled, in whole or in part, by an employer participating in the system, whose business is not limited to providing services to one (1) or more employers participating in the system, but instead also provides services to the general public or other public agencies not participating in the system, which are limited to facilities services, grounds services, custodial services, bookstore services, dining services, construction services, trade or maintenance services, health services for university students and employees of the employer, information technology services, public relation services, photography services, design services, safety services at universities, hospitality services, entertainment production services, mail services, printing and copier services, sports arena and stadium management, farrier services, assistive services at universities such as interpreters or sign language services, or delivery services.

Effective: April 12, 2022

History: Amended 2022 Ky. Acts ch. 192, sec. 1, effective April 12, 2022. -- Created 2021 Ky. Acts ch. 83, sec. 7, effective March 23, 2021.

2022-2024 Budget Reference. See State/Executive Branch Budget, 2022 Ky. Acts ch. 199, Pt. I, I, 2, (1) at 1691.

2022-2024 Budget Reference. See State/Executive Branch Budget, 2022 Ky. Acts ch. 199, Pt. I, J, 3, (1) at 1695.

2022-2024 Budget Reference. See State/Executive Branch Budget, 2022 Ky. Acts ch. 199, Pt. I, J, 4, (1) at 1695.

2022-2024 Budget Reference. See State/Executive Branch Budget, 2022 Ky. Acts ch. 199, Pt. I, J, 5, (1) at 1695.

2022-2024 Budget Reference. See State/Executive Branch Budget, 2022 Ky. Acts ch. 199, Pt. I, J, 6, (1) at 1696.

2022-2024 Budget Reference. See State/Executive Branch Budget, 2022 Ky. Acts ch. 199, Pt. I, J, 10, (1) at 1698.

2022-2024 Budget Reference. See State/Executive Branch Budget, 2022 Ky. Acts ch. 199, Pt. I, J, 11, (1) at 1698.

Legislative Research Commission Note (4/12/2022). 2022 Ky. Acts ch. 192, sec. 4, provides that the amendments made to this statute in that Act are retroactive to July 1, 2021.