

## **105 KAR 1:390. Employment after retirement.**

RELATES TO: KRS 16.505(15), 61.510, 61.590, 61.637, 78.510(3), (18), 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.590, 61.637(18), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.637(18) requires Kentucky Retirement Systems to promulgate administrative regulations to implement the requirements of KRS 61.637. This administrative regulation concerns the administration of KRS 61.637 in conjunction with federal law regarding bona fide separation from service and changes in employment relationship if a retired member returns to employment with a Kentucky Retirement Systems participating employer. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1. This administrative regulation establishes provisions relating to employment after retirement.

### Section 1. Definitions.

(1) "Initial retirement date" means the member's effective retirement date as described in KRS 61.590(5).

(2) "Participating employer" means any employer that participates in one (1) of the systems administered by Kentucky Retirement Systems.

(3) "Participating position" means a regular full-time position as defined by KRS 61.510(21) and 78.510(21) or a regular full-time officer position as defined by KRS 16.505(22).

(4) "Reemployment" means the retired member's first date of employment with a participating employer following his or her initial retirement date.

### Section 2. Form 6000 Certification.

(1) In order to retire with Kentucky Retirement Systems, an eligible member shall submit a Form 6000, Notification of Retirement, as incorporated by reference in 105 KAR 1:200. The Form 6000, Notification of Retirement, shall comply with the requirements of KRS 61.590 and 105 KAR 1:200.

(2) Kentucky Retirement Systems shall not process a Form 6000, Notification of Retirement, until the member certifies on the Form 6000 that there is no prearranged agreement for reemployment with a participating employer after the member's initial retirement date.

### Section 3. Employment After Retirement.

(1) A retired member who is reemployed with a participating employer in any position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2)(a) "Bona fide separation from service" as provided in this section shall include a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that he or she will return to work for any

participating employer in any capacity.

(b) "Prearranged agreement" as provided in this section shall not include reemployment accepted more than twelve (12) calendar months after the member's initial retirement date.

(c) An elected official's retirement shall be voided due to the existence of a prearranged agreement if, within twelve (12) months of initial retirement, the official is reelected and takes office in the same position from which the official retired.

(3) "Break in service" as provided in this section shall require that:

(a) A member who retired from a hazardous position shall have a one (1) calendar month break in service before returning to work with any participating employer in a hazardous participating position.

(b) Except as provided in paragraph(a) of this subsection, a member who retired from a hazardous or nonhazardous position shall have a three (3) calendar month break in service before returning to work with any participating employer.

(4)(a) If a retired member seeks reemployment with a participating employer within twelve (12) months of his or her initial retirement date, the participating employer shall certify that there was no prearranged agreement. The participating employer shall file at the retirement office a completed Form 6751, Employer Certification Regarding Reemployment.

(b) The retired member shall file at the retirement office a completed Form 6754, Member Reemployment Certification.

(5) Kentucky Retirement Systems shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and additional requested information. If Kentucky Retirement Systems determines that the retired member failed to have a bona fide separation from service or a break in service and returned to work with any participating employer, the retired member's retirement shall be voided and he or she shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

#### Section 4. Independent Contractors and Leased Employees.

(1)(a) Both the retired member and the participating employer shall file written notice at the retirement office if, within twelve (12) months of the retired member's initial retirement date, the retired member provides services to a participating employer as an independent contractor or as a leased employee.

(b) The participating employer shall file at the retirement office a Form 6752, Employer Certification of Independent Contractor/Leased Employee.

(c) The retired member shall file at the retirement office a completed Form 6754, Member Reemployment Certification and a complete copy of any contract under which services are provided by the retired member to the participating employer.

(2) Kentucky Retirement Systems shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and requested information. If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than an independent contractor or leased employee through a leasing company, staffing agency, or other entity, the retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall be required to have a "bona fide separation from service" and "break in service."

#### Section 5. Volunteers.

(1)(a) Both the retired member and participating employer shall file written notice at the retirement office if, within twelve (12) months of the retired member's initial retirement date, the retired member seeks to volunteer with a participating employer.

(b) The participating employer shall file at the retirement office a completed Form 6753, Employer Certification of Volunteer.

(c) The retired member shall file at the retirement office a completed Form 6754, Member Reemployment Certification.

(2) Kentucky Retirement Systems shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and requested information. If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than a volunteer, the retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall be required to have a "bona fide separation from service" and "break in service."

#### Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6751, "Employer Certification Regarding Reemployment," June 2019;

(b) Form 6752, "Employer Certification of Independent Contractor/Leased Employee," June 2019;

(c) Form 6753, "Employer Certification of Volunteer," June 2019; and

(d) Form 6754, "Member Reemployment Certification," June 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. (34 Ky.R. 826; 1388; eff. 1-4-2008; 35 Ky.R. 975; 1723; eff. 2-6-2009; 36 Ky.R. 141; eff. 10-2-2009; 46 Ky.R. 76, 883, eff. 10-4-2019.)