

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:390. Employment after retirement.

RELATES TO: KRS 15.420(2)(a), 16.010, 16.505, 61.505, 61.510, 61.565, 61.590, 61.637, 61.675, 61.702, 70.291 - 70.293, 78.510, 78.545, 78.5540, 78.625, 78.635, 95.022, 158.441, 164.952, 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.505(1)(f), 61.590, 61.637(18), 78.5540(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(f) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.637(18) and 78.5540(5) requires the Kentucky Public Pensions Authority to promulgate administrative regulations to implement the requirements of KRS 61.637 and 78.5540. This administrative regulation concerns the administration of KRS 61.637 and 78.5540 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 participating employer in a retirement system operated by the Kentucky Public Pensions Authority. 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.

Section 1. Definitions.

(1) Unless otherwise defined in this section, the definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this administrative regulation.

(2) Prior to April 1, 2021, "agency" means the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "agency" means the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "File" means a form has been received at the retirement office by mail, fax, secure email, in-person delivery, or upload via Self Service on the Web site maintained by the agency (if available).

(4) "Retirement date" means the member's effective retirement date as described in KRS 61.590(5) and 78.545.

(5) "Non-participating position" means any position of employment with a participating employer other than a regular full-time position as defined by KRS 61.510(21), 78.510(21), and 61.680(6) or a regular full-time officer position as defined by KRS 16.505(22).

(6) "Participating employer" means any employer that participates in one (1) of the systems operated by the agency.

(7) "Participating position" means a regular full-time position as defined by KRS 61.510(21), 78.510(21), and 61.680(6) or a regular full-time officer position as defined by KRS 16.505(22).

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

(9) "Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

Section 2. Form 6000 Certification.

(1) In order to retire with the systems operated by the agency, 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, KRS 78.545, and 105 KAR 1:200.

(2) The agency 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 retirement date.

Section 3. Employment After Retirement.

(1) A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions, 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 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 retirement, the official is reelected and takes office in the same position as the elected official held prior to retirement.

(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) If a retired member seeks reemployment with a participating employer within twelve (12) months of his or her retirement date, then the following shall be filed at the retirement office:

(a) The participating employer shall certify that there was no prearranged agreement on a completed Form 6751, Employer Certification Regarding Reemployment;

(b) A Form 6754, Member Reemployment Certification, completed by the retired member; and

(c) Any other information requested by the agency from the participating employer and the retired member.

(5)

(a) The agency 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.

(b) If the agency 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 in any position, including a participating position or a non-

participating position, 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 systems.

Section 4. Independent Contractors and Leased Employees.

(1) If a retired member seeks to provide services to a participating employer as an independent contractor, under a professional services contract, or as a leased employee within twelve (12) months of the retired member's retirement date, then the following shall be filed at the retirement office:

- (a) A Form 6752, Employer Certification of Independent Contractor/Leased Employee, completed by the participating employer;
- (b) A Form 6754, Member Reemployment Certification, completed by the member;
- (c) A complete copy of any contract under which services are provided by the retired member to the participating employer; and
- (d) Any other information requested by the agency from the participating employer and the retired member.

(2) The agency shall apply common law factors used by the Internal Revenue Service to determine whether a retired member is an employee of the participating employer or an independent contractor of the participating employer.

(3)

(a) The agency shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and requested information.

(b) If the agency 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."

(c) If the agency 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 employer shall be required to do the following:

- 1. Report the retired member as required by KRS 61.675, KRS 78.625, and 105 KAR 1:145;
- 2. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and
- 3. Reimburse the systems for the cost of health insurance premiums paid by the systems for the retired member.

Section 5. Volunteers.

(1) If a retired member seeks to volunteer with a participating employer within twelve (12) months of the retired member's retirement date, then the following shall be filed at the retirement office:

- (a) A Form 6753, Employer Certification of Volunteer, completed by the participating employer;
- (b) A Form 6754, Member Reemployment Certification, completed by the retired member; and
- (c) Any other information requested by the agency from the participating employer and retired member.

(2)

(a) The agency shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and requested information.

(b) If the Agency 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."

(c) If the agency determines that the retired member is an employee of the participating employer, rather than a volunteer, the employer shall be required to do the following:

1. Report the retired member as required by KRS 61.675, 78.625, and 105 KAR 1:145;
2. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and
3. Reimburse the systems for the cost of health insurance premiums paid by the systems for the retired member.

Section 6. Health Insurance Premium Reimbursements for Retired Members Reemployed by Multiple Participating Employers. If a retired member is reemployed by multiple participating employers in a calendar month in positions that qualify as regular full-time pursuant to KRS 61.510(21), 61.680(6), 78.510(21), and 78.545(16), each participating employer shall be responsible for reimbursing the systems for a portion of the health insurance premium paid by the systems to provide coverage for the retired member for that calendar month that is equal to the cost of the premium divided by the number of participating employers that are not exempt from reimbursement of health insurance premiums. Participating employers that are exempt from reimbursement of health insurance premiums under Section 7 of this administrative regulation, or by virtue of being a school board employing the retired member for eighty (80) days or less during the fiscal year, are not responsible for health insurance premiums under this Section.

Section 7. Exemption for Payment Of Employer Contributions and Reimbursement of Health Insurance Premiums for Retired Members Reemployed as Police Officers and School Resource Officers.

(1)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the health insurance premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of appointment of no more than one (1) year if a completed Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are on file at the retirement office prior to the start of the retired member's term of appointment.

(b) If a completed Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are not on file at the retirement office prior to the start of the retired member's term of appointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the calendar month after a completed Form 6760 and supporting documentation are on file at the retirement office.

(2)

(a) For each subsequent term of reappointment after the initial term of appointment listed on the completed Form 6760, County Police or Sheriff Appointment of Retired Police Officer, described in subsection (1) of this Section, the participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the health insurance premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of reappointment of no more than one (1) year if a completed Form 6764, Recertification of Retired Police Officer, is on file at the retirement office prior to the start of the retired member's term of reappointment.

(b) If a completed Form 6764, Recertification of Retired Police Officer, is not on file at the retirement office prior to the start of the retired member's term of reappointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the calendar month after a completed Form 6764 and supporting documentation are on file at the retirement office.

(3)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the health insurance premiums paid by the systems to provide coverage for a retired member reemployed as a school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a completed Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are on file at the retirement office prior to the start of the retired member's term appointment.

(b) If a completed Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are not on file at the retirement office prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a school resource officer pursuant to KRS 158.441 effective in the calendar month after a completed Form 6766 and supporting documentation are on file at the retirement office.

(4)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the health insurance premiums paid by the systems for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a completed Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are on file at the retirement office prior to the start of the retired member's term appointment.

(b) If a completed Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are not on file at the retirement office prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 effective in the calendar month after a completed Form 6767 and supporting documentation are on file at the retirement office.

(5)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the health insurance premiums paid by the systems for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 for a term of appointment of no more than one (1) year if a completed Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are on file at the retirement office prior to the start of the retired member's term appointment.

(b) If a completed Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are not on file at the retirement office prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as

a police officer by a postsecondary institution pursuant to KRS 164.952 in the calendar month after a completed Form 6768 and supporting documentation are on file at the retirement office.

(6) A participating employer shall not be eligible for exemption from payment of employer contributions or from reimbursing the systems for the costs of health insurance premiums for any retired members reemployed as a police officer pursuant to KRS 95.022 unless a Form 6769, Certification of Employed Police Officers Calendar Year 2015, is on file at the retirement office.

(7)

(a) A participating employer with a Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file at the retirement office shall be exempt from paying employer contributions and from reimbursing the systems for the costs of health insurance premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of appointment of no more than one (1) year if a completed Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are on file at the retirement office prior to the start of the retired member's term of appointment.

(b) If a completed Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are not on file at the retirement office prior to the start of the retired member's term of appointment, then the participating employer with a Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file at the retirement office shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 effective in the calendar month after a completed Form 6770 and supporting documentation are on file at the retirement office.

(8)

(a) Each subsequent term of reappointment after the initial term of appointment listed on the completed Form 6770, City Appointment of Retired Police Officer, described in subsection (7) of this Section, the participating employer with a Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file shall be exempt from paying employer contributions and health insurance premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of reappointment of no more than one (1) year if a completed Form 6774, City Recertification of Retired Police Officer, is on file at the retirement office prior to the start of the retired member's term of reappointment.

(b) If a completed Form 6774, City Recertification of Retired Police Officer, is not on file at the retirement office prior to the start of the retired member's term of reappointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for retired member reemployed as a police officer pursuant to KRS 95.022 in the calendar month after a completed Form 6764 is on file at the retirement office.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) Form 6751, "Employer Certification Regarding Reemployment," March 2022;
- (b) Form 6752, "Employer Certification of Independent Contractor/Leased Employee," April 2021;
- (c) Form 6753, "Employer Certification of Volunteer," April 2021;
- (d) Form 6754, "Member Reemployment Certification," April 2021;
- (e) Form 6760, "County Police or Sheriff Appointment of Retired Police Officer," March 2022;

- (f) Form 6766, "Appointment of Retired School Resource Officer," March 2022;
 - (g) Form 6767, "Appointment of Kentucky State Police School Resource Officer," March 2022;
 - (h) Form 6768, "Postsecondary Institution Appointment of Retired Police Officer," March 2022;
 - (i) Form 6769, "Certification of Employed Police Officers Calendar Year 2015," July 2016;
 - (j) Form 6770, "City Appointment of Retired Police Officer," March 2022; and
 - (k) Form 6774, "City Recertification of Retired Police Officer," July 2016.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the Authority's Web site at kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: April 12, 2022

FILED WITH LRC: April 13, 2022 at 10:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, June 28, 2022 at 2:00 p.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, email Legal.Non-Advocacy@kyret.ky.gov, telephone (502) 696-8800 ext. 8647, facsimile (502) 696-8801.