

Technical Amendment
June 28, 2019

105 KAR 1:430. General compliance with federal tax laws.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 26 U.S.C. 401(a)(7), (8), (25), 414(d),(p),(u), 503(b), Pub.L. 110-245

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 and to conform to federal statutes and regulations. This administrative regulation establishes Kentucky Retirement Systems' compliance with 26 U.S.C. 401(a), 26 U.S.C. 414, Pub.L. No. 110-245, and 26 U.S.C. 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefits plans.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and 401(a)(8) for Vesting and Forfeitures.

(1) A plan member shall be 100 percent vested in the member's accumulated contributions at all times.

(2) In conformity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan shall not be used to pay benefit increases. However, these forfeitures shall be used to reduce employer contributions.

(3) Upon termination or partial termination of an affected retirement system, or the complete discontinuance of contributions, a member shall have a nonforfeitable interest in his accrued benefit to the extent funded except as provided by KRS 16.652, 61.692, and 78.852.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) shall be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u), 26 U.S.C. 401(a)(37), and Pub.L. No. 110-245 for Reemployed Veterans.

(1) Effective December 12, 1994, notwithstanding any other provision of the retirement system law; contributions, benefits, and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

(2) For deaths occurring on or after January 1, 2007, that occur while a member is performing qualified military service (as defined in 38 U.S.C. 43), to the extent required by 26 U.S.C. 401(a)(37), survivors of a member in a state or local retirement or pension system are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's qualified military service shall be counted for vesting purposes.

(3) Beginning January 1, 2009, to the extent required by 26 U.S.C. 414(u)(12), an individual receiving differential wage payments as defined in 26 U.S.C. 3401(h)(2) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under 26 U.S.C. 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions. Effective as of July 1, 1989, the board shall not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Retirement Systems shall determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by rule; these benefits shall not be subject to employer discretion.

Section 6.

(1) In addition to any other vesting provisions under state law, except as provided in KRS 61.535, the normal retirement benefit of a member with nonhazardous service in the Kentucky Employees Retirement System or the County Employees Retirement System shall be nonforfeitable upon the later of:

- (a) The attainment of age sixty-five (65), which is the normal retirement age;
- (b) For a member whose membership date is on or before August 31, 2008, the completion of four (4) years of service; or
- (c) For a member whose membership date is on or after September 1, 2008, five (5) years of service earned pursuant to KRS 16.543(1), 61.543(1), or 78.615(1).

(2) In addition to any other vesting provisions under state law, except as provided in KRS 61.535, the normal retirement benefit of a member of the State Police Retirement System and a member with hazardous service in the Kentucky Employees Retirement System or the County Employees Retirement System shall be nonforfeitable upon the later of:

- (a) For a member whose membership date is on or before August 31, 2008:
 - 1. Attainment of age fifty-five (55), which is the normal retirement age; or
 - 2. The completion of five (5) years of service; or
- (b) For a member whose membership date is on or after September 1, 2008:
 - 1. Attainment of age sixty (60), which is the normal retirement age; or
 - 2. The completion of five (5) years of service earned pursuant to KRS 16.543(1), 61.543(1), or 78.615(1).

(35 Ky.R. 980; 1730; eff. 2-6-2009; 39 Ky.R. 74; 753; 10-24-2012; Crt eff. 6-28-2019.)