

STATEMENT OF EMERGENCY

105 KAR 1:148E.

Pursuant to KRS 13A.190(1)(a)2., this emergency administrative regulation is being promulgated in order to allow the Kentucky Public Pensions Authority (KPPA) to assign actuarially accrued liability contributions for a Kentucky Employees Retirement System (KERS) employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities. This administrative regulation is being filed on an emergency basis pursuant to KRS 13A.190(1)(a)2. to prevent the loss of state funds. More specifically, this administrative regulation is being filed on an emergency basis to ensure that the actuarially accrued liability contributions are timely paid in the event that a KERS employer with an actuarially accrued liability contribution calculated under KRS 61.565(1)(d) merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities. KRS 61.565 is attached for support. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

JOHN CHILTON, Chief Executive Officer

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
Kentucky Retirement Systems
(New Emergency Administrative Regulation)

105 KAR 1:148E. Merged, split, new, separate, or separated employers or entities.

RELATES TO: KRS 61.520, 61.522, 61.565, 61.645, 61.675, 61.685, 212.132

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) authorizes the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, and to conform to federal statutes and regulations. As required by KRS 61.565(1)(d)4., this administrative regulation establishes the procedures and requirements for the process of assigning actuarially accrued liability contributions for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

Section 1. Definitions.

- (1) "Actuarially accrued liability" means a prorated annual dollar contribution amount for employers with employees that have participated in or are participating in the system on or after July 1, 2021, that is based on the individual employer's percentage of the system's total actuarially accrued liability as of June 30, 2019, and determined pursuant to KRS 61.565(1)(d)1.
- (2) "Assign" means the transfer of legal and financial responsibility for paying the actuarially accrued liability to another participating or non-participating employer.
- (3) "Inactive employer" means a participating employer that ceases to have any employees in a regular full-time position participating in the system.
- (4) "Merged employer" means one or more participating employers with an actuarially accrued liability that have merged or have plans to merge with one (1) or more participating or non-participating employers into a new single entity or under the name of one (1) of the participating or non-participating employers that are part of the merger.
- (5) "New or separate employer" means:
 - (a) A participating employer with an actuarially accrued liability that forms, becomes, or is bought out by a non-participating employer; or
 - (b) A participating employer with an actuarially accrued liability that dissolves or becomes an inactive employer and another distinct entity is formed and assumes responsibility for a portion or all of the business.
- (6) "Non-participating employer" means an entity that does not participate in the system.
- (7) "Participating employer" means an employer that participates in the system.
- (8) "Split or separated employer" means a participating employer with an actuarially accrued liability that divides into two (2) or more distinct entities.
- (9) "Submit" means an employer required form, documentation, report, or payment has been received by the retirement office via mail, fax, electronic mail, the Employer Self Service Web site, or other mode specifically detailed in this administrative regulation.
- (10) "System" means the Kentucky Employees Retirement System.

Section 2. Retroactive Effective Date of Application. This administrative regulation applies to the actuarially accrued liability of any participating employer that on or after March 23, 2021 pursuant to KRS 61.565(1)(d)4., merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

Section 3. Actuarially Accrued Liability Assignment.

(1)

(a) Except as provided in paragraphs (b) and (c) of this subsection, when, on or after March 23, 2021, a participating employer that has an actuarially accrued liability becomes a merged employer, new or separate employer, or split or separated employer, the agency shall have full authority to assign a portion or all of the total actuarially accrued liability of the participating employer to:

1. The merged, new, split, separate, or separated participating employer or the merged non-participating employer; or
2. Another participating employer that voluntarily requests assignment of a portion or all of the total actuarially accrued liability of the participating employer under Section 8(2)(c) of this administrative regulation.

(b) Employers that pay the costs to cease participation in the system as provided by KRS 61.522 are not subject to the provisions of paragraph (a) of this subsection.

(c) In the case of a district health department that ceases to operate or that has a county or counties that withdraw from the district health department, the agency shall assign the total actuarially accrued liability contribution based upon the proportion of taxable property of each county as certified by the Department for Public Health in the Cabinet for Health and Family Services in accordance with KRS 212.132.

(2) The effective date of the new assignment of actuarially accrued liability shall be the latter of:

(a) The first day of the month following the completion of the merger, split, separation, or formation of a new participating employer; or

(b) March 23, 2021.

(3) If a merged, new, split, separate, or separated participating employer or the merged non-participating employer fails to pay in full an actuarially accrued liability assigned to it pursuant to this administrative regulation and KRS 61.565, the agency may pursue all available remedies, including, but not limited to, actions set forth in KRS 61.675(4), and civil payments, legal fees, and costs in accordance with KRS 61.685(3).

Section 4. Notification of Merge, Split, Separating, or New Entity.

(1)

(a) Prior to beginning the formal process of merging, splitting, separating, or becoming a new entity, a participating employer that has an actuarially accrued liability shall submit a written notification of the participating employer's intended merger, split, separation, or formation of a new entity. The written notification shall be on the participating employer's official letterhead.

(b) Following receipt of the notification required by paragraph (a) of this subsection, the agency shall make the relevant determination under Sections 5 through 9 of this administrative regulation.

(2) If the agency becomes aware, through any means, that a participating employer that has an actuarially accrued liability has merged, split, separated, or become a new or separate entity, and the participating employer failed to submit a written notification in compliance with subsection (1)(a) of this section, the agency shall make the relevant determination under Sections 5 through 9 of this administrative regulation.

Section 5. Merged Employers.

(1) The agency shall determine whether two (2) or more participating employers, or one (1) or more participating employer and one (1) or more non-participating employer, have become a merged employer on or after March 23, 2021.

(2) When two (2) or more participating employers with an actuarially accrued liability combine into a new single merged employer, then:

- (a) The merged employer shall take the necessary steps to participate in the system in accordance with KRS 61.520; and
 - (b) The entire actuarially accrued liability shall be assigned to the merged employer.
- (3)
- (a) When one (1) or more participating employers with an actuarially accrued liability combines with one (1) or more non-participating employer into a new single merged employer, then:
 - 1. The merged employer may be required to take the necessary steps to participate in the system in accordance with KRS 61.520, as determined by the agency; and
 - 2. The entire actuarially accrued liability shall be assigned to the merged employer.
 - (b) The agency shall have the authority to determine whether a merged employer as described in paragraph (a) of this subsection shall be required to take the necessary steps to participate in the system in accordance with KRS 61.520.

Section 6. New or Separate Employers.

- (1) The agency shall determine whether a new or separate employer has been created on or after March 23, 2021.
- (2) The entire actuarially accrued liability of the original participating employer that becomes the new or separate employer shall be assigned to the new or separate employer.
- (3) The agency shall have the authority to determine whether a new or separate employer as described in subsection (1) of this section shall be required to or may take the necessary steps to participate in the system in accordance with KRS 61.520.

Section 7. Split or Separated Employers.

- (1) The agency shall determine whether split or separated employers have been created on or after March 23, 2021.
- (2) Split or separated employers shall be required to take the necessary steps to participate in the system in accordance with KRS 61.520.
- (3) The actuarially accrued liability calculated for the original participating employer shall be split between the split or separated employers based on the percentage of participating employees with each split or separated employer.

Section 8. Inactive Employers.

- (1) The agency shall determine whether a participating employer is an inactive employer.
- (2) Except as provided in paragraphs (a) through (c) of this subsection, the actuarially accrued liability calculated for the inactive employer shall remain assigned to the inactive employer.
 - (a) If the inactive employer becomes part of a merged employer on or after March 23, 2021, the actuarially accrued liability of the inactive employer shall be assigned as described in Section 5 of this administrative regulation.
 - (b) If, relevant to the inactive employer, a new or separate employer is created on or after March 23, 2021, the actuarially accrued liability of the inactive employer shall be assigned as described in Section 6 of this administrative regulation.
 - (c) If any other participating employer with an actuarially accrued liability voluntarily requests that the agency assign it the actuarially accrued liability of the inactive employer, the actuarially accrued liability of the inactive employer shall be assigned by the agency to the other participating employer with an actuarially accrued liability.

Section 9. Other Similar Circumstances. Employers whose circumstances do not fit exactly into merged, new, split, separate, or separated participating employer, or merged non-participating employer as identified in Sections (5) through (8) of this administrative regulation, but have similar circumstances, shall be individually evaluated by the agency. The agency shall determine which section of this administrative regulation closest matches the employer circumstances and shall administer in accordance with the identified section.

JOHN CHILTON, CHIEF EXECUTIVE OFFICER

APPROVED BY AGENCY: September 29, 2023

FILED WITH LRC: October 11, 2023 at 3:05 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on November 21, 2023, at 11:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than 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. 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 November 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.