

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amended at ARRS Committee)

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)(g), 61.590, 61.637(18), 78.5540(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) 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 16.505 to 16.652, 61.505, 61.510 to 61.705, 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) "Bona fide separation from service" means:

(a) A cessation of the employment relationship between the member and the member's employer; and

(b) There is no prearranged agreement.

(2) "Employee" means a retired member who is performing services for an employer in a manner that demonstrates an employment relationship under the common law factors used by the Internal Revenue Service.

(3) "Non-participating position" means any position of employment with a participating employer other than a regular full-time position or a regular full-time officer position.

(4) "Participating position" means a regular full-time position or a regular full-time officer position.

(5) "Prearranged agreement" means a verbal or written, explicit or implicit agreement:

(a) Between the retired member and his or her employer for the retired member to reemploy with the employer within twelve (12) months after the retired member's effective retirement date; and

(b) That occurred prior to the retired member's effective retirement date.

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

Section 2. Form 6000 Certification.

(1) In order to retire with the systems, an eligible member shall complete and file a valid Form 6000, Notification of Retirement, which 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; and
- (b) A break in service as provided in subsection (3) of this section.

(2)

(a) A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions shall not have a prearranged agreement.

(b) An elected official who is reelected and takes office in the same elected position as he or she held prior to retirement within twelve (12) months after his or her effective retirement date shall be deemed to have a prearranged agreement.

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

(a) For effective retirement dates prior to January 1, 2024:

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

2. Except as provided in subparagraph 1. of this paragraph, a member who retired from a hazardous or nonhazardous position shall have a three (3) month break in service before returning to work with any participating employer in a participating or nonparticipating position.

(b) For effective retirement dates beginning January 1, 2024, a member who retired from a hazardous or nonhazardous position shall have a one (1) month break in service before returning to work with any participating employer in a participating or nonparticipating position.

(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:

(a) A valid Form 6751, Employer Certification Regarding Reemployment, completed by the participating employer, which shall certify that there was no prearranged agreement;

(b) A valid 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 pursuant to KRS 61.637(8) and 78.5540(2)(a).

(5)

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

(b) If the agency determines that the retired member failed to comply with any of the requirements of this section or federal law, the retired member's retirement shall be voided and he or she shall repay all retirement allowances, dependent child payments, and hospital and medical insurance 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:

- (a) A valid Form 6752, Employer Certification of Independent Contractor/Leased Employee, completed by the participating employer;
 - (b) A valid Form 6754, Member Reemployment Certification, completed by the retired 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 pursuant to KRS 61.637(9) and 78.5540(2)(b).
- (2) The agency shall apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779, Independent Contractor or Employee, to determine whether a retired member is an employee of the participating employer or an independent contractor of the participating employer. The agency may also consider rules issued by the United States Department of Labor for determining whether a worker is an employee or an independent contractor under federal wage and hour law.
- (3)
- (a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar 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:
 - 1. The retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall have a "bona fide separation from service" and "break in service"; and
 - 2. The employer shall:
 - a. Report the retired member as required by KRS 61.675, 78.625, and 105 KAR 1:140;
 - b. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and
 - c. Reimburse the systems for the cost of hospital and medical insurance plan premiums paid by the systems for the retired member.
 - (c) If the agency determines that the retired member is an independent contractor or leased employee through a leasing company, staffing agency, or other entity, the retired member may still be required to observe a bona fide separation from service to the extent required by federal law.

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:
- (a) A valid Form 6753, Employer Certification of Volunteer, completed by the participating employer;
 - (b) A valid 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 pursuant to KRS 61.637(8) and 78.5540(2)(a).
- (2)
- (a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar 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:
 - 1. The retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall have a "bona fide separation from service" and "break in service"; and

2. The employer shall:

- a. Report the retired member as required by KRS 61.675, 78.625, and 105 KAR 1:140;
- b. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and
- c. Reimburse the systems for the cost of hospital and medical insurance plan premiums paid by the systems for the retired member.

(c) If the agency determines that the retired member is a volunteer, the retired member may still be required to observe a bona fide separation from service to the extent required by federal law.

Section 6. Hospital and Medical Insurance Plan Premium Reimbursements for Retired Members Reemployed by Multiple Participating Employers.

(1) This section shall only apply to a retired member who is reemployed by a participating employer on or after September 1, 2008 in accordance with KRS 61.637(17) and 78.5540(4).

(2) If a retired member is reemployed by multiple participating employers in a month in two (2) or more regular full-time positions, one (1) regular full-time position and one (1) or more part-time positions pursuant to KRS 61.680(6) and 78.545, or multiple part-time positions pursuant to KRS 61.680(6) and 78.545, then:

(a) Each participating employer shall be responsible for reimbursing the systems for a portion of the hospital and medical insurance plan premium paid by the systems to provide coverage for the retired member for that month; and

(b) The portion shall be equal to the cost of the premium divided by the number of participating employers that are not exempt from reimbursement of hospital and medical insurance plan premiums.

(3) Participating employers that are exempt from reimbursement of hospital and medical insurance plan premiums under Section 7 of this administrative regulation, or by virtue of being a school board employing the retired member for eighty (80) calendar days or less during the fiscal year, are not responsible for hospital and medical insurance plan premiums under this section.

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

(1) This section shall only apply to a retired member who is reemployed by a participating employer on or after September 1, 2008 in accordance with KRS 61.637(17) and 78.5540(4).

(2)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical insurance plan 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 valid Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are on file prior to the start of the retired member's term of appointment.

(b) If a valid Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are not on file 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 hospital and medical insurance plan premiums for a retired member reemployed as a police officer pursuant

to KRS 70.291 to 70.293 effective in the month after a valid Form 6760 and supporting documentation are on file.

(3)

(a) For each subsequent term of reappointment after the initial term of appointment listed on the valid 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 hospital and medical insurance plan 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 valid Form 6764, Recertification of Retired Police Officer, is on file prior to the start of the retired member's term of reappointment.

(b) If a valid Form 6764, Recertification of Retired Police Officer, is not on file 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 hospital and medical insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the month after a valid Form 6764 and supporting documentation are on file.

(4)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical insurance plan 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 valid Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are on file prior to the start of the retired member's term of appointment.

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

(5)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical insurance plan 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 valid Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are on file prior to the start of the retired member's term of appointment.

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

(6)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical insurance plan

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 valid Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are on file prior to the start of the retired member's term of appointment.

(b) If a valid Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are not on file prior to the start of the retired member's term of appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical insurance plan premiums for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 in the month after a valid Form 6768 and supporting documentation are on file.

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

(8)

(a) A participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file shall be exempt from paying employer contributions and from reimbursing the systems for the costs of hospital and medical insurance plan 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 valid Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are on file prior to the start of the retired member's term of appointment.

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

(9)

(a) For each subsequent term of reappointment after the initial term of appointment listed on the valid Form 6770, City Appointment of Retired Police Officer, described in subsection (7) of this section, the participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file shall be exempt from paying employer contributions and hospital and medical insurance plan 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 valid Form 6774, City Recertification of Retired Police Officer, is on file prior to the start of the retired member's term of reappointment.

(b) If a valid Form 6774, City Recertification of Retired Police Officer, is not on file 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 hospital and medical insurance plan premiums for retired member reemployed as a police officer pursuant to KRS 95.022 in the month after a valid Form 6774 is on file.

(10) If the appropriate form as required by this section is not on file, then the employer shall not be exempt from paying employer contributions and reimbursement of hospital and medical insurance plan premiums.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) Form 6000, "Notification of Retirement", June 2023;
- (b) Form 6751, "Employer Certification Regarding Reemployment", December 2023;
- (c) Form 6752, "Employer Certification of Independent Contractor/Leased Employee", December 2023;
- (d) Form 6753, "Employer Certification of Volunteer", December 2023;
- (e) Form 6754, "Member Reemployment Certification", December 2023;
- (f) Form 6760, "County Police or Sheriff Appointment of Retired Police Officer", December 2023;
- (g) Form 6764, "Recertification of Retired Police Officer", December 2023;
- (h) Form 6766, "Appointment of Retired School Resource Officer", December 2023;
- (i) Form 6767, "Appointment of Kentucky State Police School Resource Officer", December 2023;
- (j) Form 6768, "Postsecondary Institution Appointment of Retired Police Officer", December 2023;
- (k) Form 6769, "Certification of Employed Police Officers Calendar Year 2015", December 2023;
- (l) Form 6770, "City Appointment of Retired Police Officer", December 2023;
- (m) Form 6774, "City Recertification of Retired Police Officer", December 2023; and
- (n) Internal Revenue Service Publication 1779, "Independent Contractor or Employee", March 2023.

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(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; 48 Ky.R. 2811; 49 Ky.R. 317; eff. 9-27-2022; 50 Ky.R. 15598, 2004; eff. 7-2-2024.)

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