

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
County Employees Retirement System
(Amendment)

105 KAR 1:120. Participation of County Employees Retirement System employers~~[agencies]~~.

RELATES TO: KRS ~~78.510-78.990~~~~[78.510(3), 78.530, 78.532, 78.535, 78.780]~~, 26 U.S.C. 414(d), 29 U.S.C. 1002(32)

STATUTORY AUTHORITY: KRS ~~[61.645(9)(e),]~~78.510(3), ~~78.782~~~~[78.780]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~[61.645(9)(g)]~~ ~~authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS [78.510(3)]~~ authorizes the Board of Trustees of the County Employees Retirement System~~[board]~~ to determine the eligibility of a prospective employer~~[an agency]~~ to participate in the County Employees Retirement System (CERS)~~[, or CERS]~~. KRS ~~78.782~~~~[78.780]~~ authorizes the Board of Trustees of the County Employees Retirement System to promulgate administrative regulations not inconsistent with the provisions of KRS 78.510 to 78.852 that are necessary or proper to carry out the provisions of KRS 78.510 to 78.852.~~[board to govern and control CERS in the same manner in which it administers the Kentucky Employee Retirement System.]~~ This administrative regulation establishes the procedures and requirements for employer participation in CERS.

Section 1. Definitions.

(1) ~~["Alternate plan" means the plan under which an employer purchases service credit for its employees by paying an actuarial cost of the service in a lump sum or by annual installments.]~~

~~[(2)]~~ "Board" is defined by KRS 78.510(2).

(2) "Inactive employer" means a participating employer that ceases to have any employees in a regular full-time position participating in the system.

(3) "Merged employer" means one (1) or more participating employers that have merged with one or more participating or non-participating employers into a new single entity or operating under the name of one (1) of the participating or non-participating employers that are part of the merger.

(4) "New or separate employer" means:

(a) A participating employer that forms, becomes, or is bought out by a non-participating employer; or

(b) A participating employer that dissolves or becomes an inactive employer, and another distinct entity is formed and assumes responsibility for a portion or all of the business.

(5) "Non-participating employer" means:

(a) An entity that does not participate in the system; or

(b) An entity that applied for participation in the system and:

1. Is pending a determination of participation;

2. Withdrew its application; or

3. Was denied or failed to complete the requirements to be approved for participation.

(6) "Split or separated employer" means a participating employer that divides into two (2) or more distinct entities.

(7) ~~[(3)]~~ "System" ["CERS" or "system"] is defined by KRS 78.510(1).

Section 2. Participation in the System. For a prospective employer to participate in the system, the prospective employer shall:

- (1) Meet ~~[An agency may participate in CERS if the board determines that the agency:]~~
 - ~~[(a)]~~ Meets the definition of county in KRS 78.510(3);
- (2) ~~[(b)]~~ Be ~~[is]~~ qualified to establish and maintain a governmental plan as defined in 26 U.S.C. 414(d) and 29 U.S.C. 1002(32);
- (3) ~~[(c)]~~ Have an irrevocable contract with the Kentucky Personnel Cabinet for health insurance coverage for its employees in accordance with KRS 78.530(1)(b);
~~[Satisfactorily completes the trial period established in subsection (2) of this section;]~~
 - ~~[(d)]~~ Submits all forms and documents necessary for participation in CERS by day fifteen (15) of the month prior to the effective date of participation; and
- (4) ~~[(e)]~~ Comply ~~[Complies]~~ with:
 - (a) ~~[1.]~~ KRS 78.510 through 78.852~~[78.990]~~; and
 - (b) ~~[2.]~~ KAR Title 105; ~~[105 KAR 1:020 through 105 KAR 1:360.]~~
- (5) Complete the requirements of Sections 3–5 of this administrative regulation; and
- (6) Receive board approval in accordance with Section 6 of this administrative regulation.

Section 3. Determining Prospective Employer's Qualification to Participate.

- (1) A prospective employer shall submit a resolution or ordinance by its controlling board authorizing participation in the system as provided by KRS 78.530(1) within twelve (12) months of the date the resolution or ordinance was passed.
- (2) No later than the end-of-day ninety (90) calendar days from the date the resolution or ordinance indicated in subsection (1) of this section is submitted, the prospective employer shall submit:
 - (a) Its Articles of Incorporation, bylaws, ordinance, or other document establishing or creating the prospective employer;
 - (b) Its current fiscal year budget;
 - (c) Its health insurance contract as described in Section 2(1)(c) of this administrative regulation;
 - (d) A valid Form 2010, Election or Rejection of Participation, completed by all current employees;
 - (e) A valid Form 7075, Employer Contact Information;
 - (f) A valid Form 7250, Verification of Payments Outside Regular Wages;
 - (g) A valid Form 7280, Employer Certification of Installment Purchase of Service;
 - (h) A valid Form 7851, Data Use Agreement;
 - (i) A valid Form 7071, Employer Self Service Employer Administrator Account Creation Request; and
 - (j) If requested by the agency, a letter from the U.S. Internal Revenue Service or U.S. Department of Labor that states the entity sufficiently meets the governmental requirements to participate in a qualified governmental retirement plan.
- (3)
 - (a) Once the requirements of subsections (1)–(2) of this section are received by the agency, the agency shall review the documentation and determine if the prospective employer meets the requirements for participation in the system.
 - (b) If a prospective employer meets the requirements for participation in the system, the agency shall initiate a trial period of participation for the prospective employer in accordance with Section 4 of this administrative regulation.

Section 4. Trial Period.

- (1) ~~[(2)]~~ The prospective employer ~~[Prior to board approval of an agency that has elected to participate in CERS, the agency]~~ shall serve a three (3) month trial period which shall

begin on the first day of the month following the completion to the requirements as provided in Sections 2-3 of this administrative regulation.

(2) During the trial period, the prospective employer ~~[, during which it]~~ shall:

- (a) Submit all reports required by KRS 78.625 in accordance with 105 KAR 1:140;
 - (b) Remit applicable employer, employee, and health insurance contributions in accordance with 105 KAR 1:140; and
 - (c) Require employee participation in accordance with KRS 78.530, 78.531, 78.535, and 78.540.
- ~~[(a)] [Report contributions; and]~~
~~[(b)] [Comply with the provisions of applicable statutes and administrative regulations governing:]~~
~~[1.] [Employee participation; and]~~
~~[2.] [Reporting of contributions.]~~

Section 5. Submission to the Board. Once the requirements of Sections 2-4 of this administrative regulation are complete, the agency shall provide the board the prospective employer's:

- (1) Trial period results;
- (2) Current fiscal year's budget; and
- (3) Resolution or ordinance authorizing participation in the system.

Section 6. Board Review.

- (1) The prospective employer shall obtain authorization to participate from the board as provided by KRS 78.510(3).
- (2) ~~[(3)]~~ The board may deny participation if it determines that a prospective employer~~[-:]~~
 - ~~[(a)]~~ ~~[An agency]~~ has failed to comply with the provisions of Sections 2-4 of this administrative regulation~~[, subsection (1) of this section;]~~ or if the prospective employer's
 - ~~[(b)]~~ ~~[Its]~~ participation will have:
 - (a) ~~[1.]~~ An adverse impact on the tax qualification of the system~~[CERS]~~, pursuant to 26 U.S.C. 414(d) or any other applicable federal law and administrative regulation; or
 - (b) ~~[2.]~~ A significant adverse impact on the actuarial soundness of the system~~[CERS]~~.
- (3)
 - (a) ~~[(4)]~~ If the board denies a prospective employer's~~[an agency's]~~ request to participate in the system~~[CERS;]~~ it shall refund to the prospective employer~~[agency]~~ and its employees the contributions paid by them to the system~~[CERS]~~ during the prospective employer's~~[agency's]~~ trial period.
 - (b) If the board approves the prospective employer's request to participate in the system, the

~~[Section 3.]~~ ~~[The]~~ effective date of participation shall be the first day of the trial period as indicated in Section 4 of this administrative regulation.~~[-:]~~

- ~~[(1)]~~ ~~[The month during which the order required by KRS 78.530(1) is adopted; or]~~
- ~~[(2)]~~ ~~[Any month subsequent to the month during which the order required by KRS 78.530(1) was adopted.]~~

Section 7. ~~[Section 4.]~~ Alternate Participation Plan.

- (1) If a prospective employer~~[an agency]~~ wishes to participate under the alternate participation plan pursuant to KRS 78.530(3), it shall request the board~~[Kentucky Retirement Systems]~~ to conduct an actuarial study to determine the cost of purchasing past service for eligible employees prior to adoption of a resolution or ordinance by its controlling board authorizing participation in the system~~[an order to participate]~~.
- (2) ~~[Section 5.]~~ ~~[An agency shall designate a person to be responsible for compliance with applicable statutes and the reporting requirements established in:]~~

- ~~[(1)] [105 KAR 1:130;]~~
- ~~[(2)] [105 KAR 1:140;]~~
- ~~[(3)] [105 KAR 1:150;]~~
- ~~[(4)] [105 KAR 1:160;]~~
- ~~[(5)] [105 KAR 1:170;]~~
- ~~[(6)] [105 KAR 1:210; and]~~
- ~~[(7)] [105 KAR 1:250.]~~

~~[Section 6.]~~ The annual installment to amortize the cost of the employees' service under the alternate participation plan shall not be less than ten (10) percent of the total annual payroll for nonhazardous employees and fifteen (15) percent of the total annual payroll for hazardous employees included in the alternate participation plan. The payment shall be due each year on the first day of the month in which participation began.

Section 8. Continued Participation. Pursuant to KRS 78.530(2), once an employer begins participating in the system, the employer shall continue to participate as long as it remains qualified unless:

- (1) The board requires the employer to involuntarily cease participation in accordance with KRS 78.535(2)(b); or
- (2) A voluntary cessation is allowed pursuant to KRS 78.535(2)(a).

Section 9. Split, Separated, or New Entity.

(1) Prior to beginning the formal process and not less than six (6) months prior to the effective date of splitting, separating, or becoming a new entity, a participating employer shall submit a written notification of its intended split, separation, or formation of a new entity. The written notification shall be submitted on the participating employer's official letterhead.

(2) Once the agency is notified of the split, separation, or formation of a new entity, or becomes aware through any means, the agency shall determine whether:

- (a) A new or separate employer has been created; or
- (b) Split or separated employers have been created.

(3)

(a) A split, separated, or new employer shall participate in the system if, by the end of day fifteen (15) calendar days from the date of the split, separation, or formation of a new entity, all the requirements prescribed in Section 3(2) of this administrative regulation are submitted.

(b) The participation date shall be:

- 1. The first day of the month following the date all the required documentation was received, if received by the 15th day of the month; or
- 2. The first day of the month following the month after the date all the required documentation was received, if received after the 15th day of the month.

(c) The split, separated, or new employer shall comply with KRS 78.510 through 78.852 and KAR Title 105 as of the participation date.

(d) If the split, separated, or new employer fails to complete the requirements of paragraph (a) of this subsection, then the split, separated, or new employer shall only participate if it takes all steps to participate in the system in accordance with KRS 78.530 and this administrative regulation.

(4) If there is a lapse in participation between the date the employer split, separated, or became a new entity and when it began participating, an employee who worked during the lapsed time may purchase service credit for that time by paying a delayed contribution payment if he or she elected to participate on a valid Form 2010, Election or Rejection of Participation, at the time the split, separated, or new entity began participating. The service shall not be included:

- (a) In the member's total service for purposes of determining benefits under KRS 78.5536; or
- (b) Toward retirement eligibility for members with a participation date on or after August 1, 2004, in accordance with KRS 61.552(10)(c), and 78.545.

Section 10. Merged Employer.

- (1) Prior to beginning the formal process and not less than six (6) months prior to the effective date of merging, a participating employer shall submit a written notification of its intended merger. The written notification shall be submitted on the participating employer's official letterhead.
- (2) Once the agency is notified of the merger, or becomes aware by other means, 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.
- (3) Once the merger is complete, the merged employer shall comply with KRS 78.510 through 78.852 and KAR Title 105.

Section 11. Inactive Employers.

- (1)
 - (a)
 - 1. If an employer becomes an inactive employer, the employer shall submit a written notification on its official letterhead stating that the employer is an inactive employer.
 - 2. Each year by the end of day on the last day of the month of the fiscal year, an inactive employer shall submit a written notification on its official letterhead stating that it remains an inactive employer, or stating that the employer is no longer an inactive employer as applicable.
 - (b) If an employer ceases to become an inactive employer, the employer shall:
 - 1. Submit a written notification on its official letterhead stating that the employer is no longer an inactive employer by the end of day thirty (30) calendar days from having a participating employee; and
 - 2. Begin reporting a participating employee the month after he or she becomes a participating employee.
 - (c) The agency shall determine whether a participating employer is an inactive employer.
- (2) Employers shall comply with KRS 78.510 through 78.852 and KAR Title 105, regardless of the employer's status as an inactive employer.
- (3) The agency shall periodically audit inactive employers to determine if they remain inactive employers.

Section 12. Incorporation by Reference.

- (1) The following forms are incorporated by reference:
 - (a) Form 2010, "Election or Rejection of Participation", updated March 2024;
 - (b) Form 7071, "Employer Self Service Employer Administrator Account Creation Request", updated March 2024;
 - (c) Form 7075, "Employer Contact Information", updated March 2024;
 - (d) Form 7250, "Verification of Payments Outside Regular Wages", updated March 2024;
 - (e) Form 7280, "Employer Certification of Installment Purchase of Service", updated March 2024; and
 - (f) Form 7851, "Data Use Agreement", updated January 2024.
- (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 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

ED OWENS, CEO

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 12, 2024 at 2:15 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Tuesday, June 25, 2024, at 10:00 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 June 30, 2024. 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures and requirements for employer participation in CERS.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to allow the Kentucky Public Pensions Authority to effectively administer KRS 78.510 to 78.852.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the County Employees Retirement System that are consistent with KRS 78.510 to 78.852. KRS 78.510(3) authorizes the Board of Trustees of the County Employees Retirement System to determine the eligibility of an employer to participate in the County Employees Retirement System (CERS). KRS 78.782 authorizes the Board of Trustees of the County Employees Retirement System necessary or proper in order to carry out the provisions of 78.510 to 78.852.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists with the effective administration of the statutes by establishing the procedures and requirements for employer participation in CERS.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment adds details of the employer procedures and requirements for participation in CERS.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to effectively determine the eligibility of an employer to participate in the County Employees Retirement System (CERS) and to ensure the employer is fully aware of the procedures and requirements to participate.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the County Employees Retirement System that are consistent with KRS 78.510 to 78.852. KRS 78.510(3) authorizes the Board of Trustees of the County Employees Retirement System to determine the eligibility of an employer to participate in the County Employees Retirement System (CERS). KRS 78.782 authorizes the Board of Trustees of the County Employees Retirement System necessary or proper in order to carry out the provisions of 78.510 to 78.852.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment assists with the effective administration of the statutes by adding needed details about the procedures and requirements for participation in CERS.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

One (1) entity that provides day-to-day operations for the County Employees Retirement System: Kentucky Public Pensions Authority. It is unknown how many new employers will go through the process to participate in the County Employees Retirement System.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The Kentucky Public Pensions Authority must administer the process and approval of employees to participate in the County Employees Retirement System. The Board of Trustees for the County Employees Retirement System must approve employer participation in the County Employees Retirement System. Potential employers seeking to participate in the County Employees Retirement System must comply with the steps outlines in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The cost of compliance with this administrative regulation for the Kentucky Public Pensions Authority, the County Employees Retirement System and the Board of Trustees for the County Employees Retirement System should be negligible, as this administrative regulation is already being administered as written.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The benefits for the entities identified should be negligible, as this administrative regulation is already being administered as written. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The costs associated with the implementation of this amendment should be negligible.

(b) On a continuing basis:

The continuing costs associated with this amendment should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There is no increase in fees or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied. All entities are subject to the same processes and procedures.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 61.505(1)(g), 78.510(3), and 78.782.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The promulgating agency for this administrative regulation is the Kentucky Public Pensions Authority. There are no other state entities affected by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures:Negligible.

Revenues:None.

Cost Savings:None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The expenditures related to this administrative regulation will be negligible in subsequent years because this administrative regulation is already being administered as written. There is no revenue or cost saving for this administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

The County Employees Retirement System. It may also impact local government employers seeking to participate in the County Employees Retirement System.

(a) Estimate the following for the first year:

Expenditures:Negligible.

Revenues:None.

Cost Savings:None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The expenditures related to this administrative regulation will be negligible in subsequent years because this administrative regulation is already being administered as written. There is no revenue or cost saving for this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3):

None.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

None.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written.

(b) Methodology and resources used to determine the fiscal impact:

This administrative regulation is already being administered as written.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

This administrative regulation will not have a "major economic impact" because this administrative regulation is already being administered as written.

(b) The methodology and resources used to reach this conclusion:

This administrative regulation is already being administered as written.