

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(Amendment)

102 KAR 1:340. Calculation of final average salary.

RELATES TO: KRS 161.220(9)

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.220(9) establishes the definition of "final average salary" including permissible salary increases for annuity calculations~~[for retirement calculation purposes, which limits the amount of increases in salaries that can be included as final average salary if those increases are received for any of the three (3) years of employment immediately prior to retirement, unless the member experiences a corresponding change in position or in length of employment]~~. This administrative regulation establishes the method for calculating final average salary if there is a change in position or in length of employment. This administrative regulation establishes how KRS 161.220(9) is applied.~~[for any of the final three (3) years immediately prior to retirement, and measuring the increase in compensation for those final three (3) years.]~~

Section 1. Definitions.

(1) "Additional duties" means service from a duty or duties outside of the member's primary job duty. This includes compensation paid from a district's supplemental or extra service salary schedule, such as coaching, club sponsoring, and summer school teaching. Additional duties also includes extended school services (ESS). For members employed by employers that are not school districts, additional duties includes assignments, responsibilities, duties, college credit hour classes taught, grant writing, and projects that are outside of, or added to, the member's position.

(2) "Newly Created Position" means a position that did not exist at least a full twelve (12) months prior to the member's assumption of that position.

(3) "Position" means:

(a) The primary job duty performed by a member that, standing alone, earns service credit in TRS, whether that job duty is provided in full-time employment as defined in KRS 161.220(21), part-time employment, or substitute teaching; and

(b) Does not include additional duties as defined in this administrative regulation.

(4) "Previously existing position" means a position that existed at least a full twelve (12) months prior to the member's assumption of that position.

(5) "Salary schedule" means only the single certified salary schedule based on rank and step generally applicable districtwide for teachers and excludes other schedules or compensation arrangements.

(6) "rank and step" means a single, specific cell on the salary schedule where rank serves as one axis of the schedule and step as the other.

Section 2. A member who receives an increase in salary that exceeds the limits permitted for inclusion as final average salary pursuant to KRS 161.220(9)(b), but experiences a corresponding change in length ~~in~~ⁱⁿ employment, shall have his or her final average salary calculated using salaries adjusted in the manner established in this section.

(1) The member shall receive one (1) additional day of salary for retirement calculation purposes at the member's base daily rate of pay for each day added to the member's annual contract in excess of the member's contracted days from the last immediately prior fiscal year.

(2) The base daily rate of pay used as an additional day of salary for retirement calculation purposes shall not include compensation:

- (a) For extra duties worked beyond the member's primary job duty for which the member receives most of his or her compensation;
- (b) That exceeds the limitations established by KRS 161.220(9)(b);
- (c) That is not "annual compensation" as defined by KRS 161.220(10); or
- (d) That is otherwise excluded from use in retirement calculations pursuant to the provisions of KRS 161.220 through 161.716.

(3) The additional days shall be worked days in order to have the additional salary included for retirement calculation purposes.

Section 3. The limitation established by KRS 161.220(9)(b) on the amount of salary included in each of the member's three (3) highest salaries shall not apply if the increase in the member's salary is due to a corresponding change in position. A corresponding change in position only occurs if:

- (1) The member assumes a newly created position in which all duties are new and different from the previous position the member held;
- (2) The member moves from one (1) position to another separate, previously existing position; or
- (3) The member assumes a second, previously existing position in its entirety, and now occupies two (2) different positions.
- (4) For purposes of paragraphs (b) and (c) of this subsection:
 - (a) For school district employers, the district salary schedule shall be proof of a previously existing position.
 - (b) For other employers, proof of a previously existing position includes official employment records, such as those for classified and non-classified positions established under the state merit system.
 - (c) For all employers, a title change, in and of itself, shall not be proof.

Section 4. The limitation established by KRS 161.220(9)(b) on the amount of salary included in each of the member's three (3) highest salaries shall apply in situations including if:

- (1) A member performs additional duties during ~~the~~^{the} fiscal year; or
- (2) The employer changes the member's duties or responsibilities to include additional duties or responsibilities within the member's existing position; or
- (3) The member assumes some, but not all, duties of a second position; or
- (4) The member assumes a newly created position in which not all duties are new and different.

Section 5.

~~[(1)] [Members who experience a corresponding change in position shall be entitled to receive salary credit.]~~

~~[(a)] [If the employer is a school district, based upon the compensation paid to the new position from the previous year's salary schedule, plus a percentage increase equal to the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district; or]~~

~~[(b)] [If the employer is not a school district, the percentage increase received by all other members.]~~

~~[(2)] Any contributions paid to TRS on salaries that are disallowed under KRS 161.220(9)(b) shall be refunded to the school district on the member's behalf. [102 KAR 1:340. Calculation of final average salary if there is a corresponding change in position or in length of employment during any of the final three (3) years immediately prior to retirement.]~~

Section 6. The measurement of the limitation under KRS 161.220(9)(b) shall be applied so that the combined increase in salary for each of the last three (3) full years of salary prior to retirement shall not exceed the total permissible, percentage increase received by other members of the employer for the same three (3) year period. The increases for each of the last three (3) full years of salary shall be measured from, and compared to, the base full fiscal year salary that is immediately prior to the last three (3) full years of salary.

Section 7.

(1) In determining the limitation under KRS 161.220(9)(b), the total permissible percentage increase for a school district is the highest percentage increase for a specific cell of the salary schedule as defined in Section 1(5) from one (1) fiscal year to the next and excludes any increase from one (1) cell to another cell whether by rank or step.

(2) Individual members may have increases greater than the district's permissible increase when they advance on the salary schedule as defined in Section 1(5) in step or rank. Individual members may not have increases greater than the district's permissible increase when they advance on a pay schedule or compensation agreement other than the salary schedule as defined in Section 1(5).

BRENDA MCGOWAN, Chairperson

APPROVED BY AGENCY: September 16, 2024

FILED WITH LRC: September 26, 2024 at 11:45 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 23 December 2024, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) working days 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 through 31 December 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.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation provides a method for calculating a member's final average salary under KRS 161.220(9)(b).

(b) The necessity of this administrative regulation:

This administrative regulation provides a method for calculating a member's final average salary when there is a corresponding change in position or length of employment.

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

KRS 161.220(9)(b) provides exceptions for certain salary increases in a member's final years of service that would otherwise be excluded from use in retirement calculations. This administrative regulation will help clarify those exceptions.

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

By helping define the exceptions under KRS 161.220(9)(b), this administrative regulation will provide the method for calculating a member's final average salary when there is a change in position or in length of employment.

(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:

The amendment will provide further detail regarding the calculation of the salary limitation.

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

The amendment will provide in law more detail regarding the calculation of the salary limitation.

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

The amendment provides details for the application of the mandated statutory limitation.

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

The amendment will provide clarification of how the limitation is calculated and applied.

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

This administrative regulation affects members whose salaries increase beyond the limitations of KRS 161.220(9)(b) for inclusion in retirement calculation purposes.

(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:

Members will not be required to take any action as a result of this administrative regulation.

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

. There is no cost.

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

. There are no additional benefits.

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

(a) Initially:

None.

(b) On a continuing basis:

None.

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

No additional funding is needed for the implementation and enforcement of the proposed administrative amendment.

(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:

No increase in fees or funding will be required.

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

The proposed regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied, as the regulation applies equally to all members whose salaries exceed the limitations of KRS 161.220(9)(b), but who also experience a corresponding change in position or in length of employment.

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 161.310 and KRS 161.220(9).

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

Teachers' Retirement System of the State of Kentucky.

(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?

There will be no difference.

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

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?

There will be no difference.

(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?

There will be no difference.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

There is no fiscal impact.

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

None needed since there is no fiscal impact.

(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)

There is no overall negative or adverse major economic impact.

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

None needed as there is no negative or adverse major impact.